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TRANSCRIPT OF RECORD

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 17071

GEORGE B. PARR, D. C. CHAPA, B. F. (TOM) DONALD, JR., JESUS G. GARZA, SANTIAGO GARCIA, OCTAVIO SAENZ, JESUS OLIVEIRA, O. P. CARRILLO, OSCAR CARRILLO, SR., TEXAS STATE BANK OF ALICE, ALICE, TEXAS, and SAN DIEGO STATE BANK, SAN DIEGO, TEXAS,

Appellants,

-versus-

UNITED STATES OF AMERICA,

Appellee

Appealed from the United States District Court for the Southern District of Texas

U. S. COURT OF APPEALS
FILED

ALPHA LAW BRIEF CO., 402 M & M BLDG., HOUSTON 2

(Original Record Received JUN 2 1958 19....)

EDWARD W. WADSWORTH
CLERK

1-1 REPORTER'S TRANSCRIPT OF TESTIMONY

I, Jeanne M. Wagner, official shorthand reporter for the United States District Court, for the Southern District of Texas, Houston Division, hereby certify that the following is a full, true and complete transcript of the testimony had on the trial of the above styled and numbered cause, before His Honor, Joe Ingraham, one of the Judges of said Court, commencing on the 6th day of May, 1957.

Witness my official hand at my office in Houston, Harris County, Texas, in said district and division, on this the 8th day of March, 1958.

JEANNE M. WAGNER
Official Shorthand Reporter
United States District Court
Southern District of Texas.

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APPEARANCES:

Malcolm R. Wilkey, Esq.,
United States District Attorney
Post Office Building
Houston, Texas

Edgar O. Bottler, Esq.,
Assistant United States Attorney
Post Office Building
Houston, Texas

For the Government.

Percy Foreman, Esq.,
1116 Capitol Avenue
Houston, Texas

T. Gilbert Sharpe, Esq.,
418 East 12th Street
Brownsville, Texas

Luther E. Jones, Jr., Esq.,
330 Laurel Drive
Corpus Christi, Texas

For the Defendant.

(The twelve selected jurors, and the four alternate jurors, thereupon took their seats in the jury box.)

Mr. Sharpe: Your Honor please, before the jury is sworn, we have one matter which we would like to present to you at the bench.

The Court: Very well. Is there any reason why I cannot excuse the balance of these jurors?

Mr. Sharpe: That is perfectly allright.

The Court: Would the matter raised which you want presented at the bench, in any way interfere with it.

Mr. Sharpe: It does not, Your Honor.

The Court: Will all of those who were not chosen, you are instructed to report to Judge Hannay's courtroom for further service. Thank you, ladies and gentlemen.

(The following proceedings were held at the bench out of the presence and hearing of the jury.)

Mr. Sharpe: Your Honor, the matter that we are to present does not, in our opinion, call for any ruling of the Court. We simply desire to make a statement, in view of the fact that we have had three mistrials here, for the purpose of clarifying our position on motions heretofore filed, and acted upon, and we want the record to show that last year, the defendants did present to Judge Hannay four motions.

The Court: I suggest you speak lower.

Mr. Sharpe: Four motions, one to quash the indictment, the second for a bill of particulars, the third for a change of venue of this cause to the Corpus Christi Division of the Court, and the fourth for discovery and inspection of documents. Each of these motions were presented to

the Court, and were overruled, to which the defendants then duly objected and excepted, and now object and except.

The Court: Didn't I previously overrule them?

Mr. Sharpe: No, Your Honor, Judge Hannay did. Then, Your Honor, at the second mistrial—I beg your pardon, at the third mistrial of this case, the defendants filed a motion on behalf of O. P. Carrillo and Jesus Oliveira to dismiss the twentieth count of the indictment, which is the conspiracy count, and a request that the defendants be not arraigned on the twentieth count of the indictment insofar as it related to any matters which had been adjudicated in the first nineteen counts of the indictment upon which these defendants had been found not guilty, and the Court overruled that motion, to which we duly object and except, and the purpose of making this statement, as I said before, is simply to clarify the record at the outset of this trial.

The Court: Does the Government wish to say anything at this time?

Mr. Wilkey: Nothing, Your Honor.

The Court: I recall previously the matter was brought up about reading the name of O. P. Carrillo and Jesus Oliveira, and at that time I instructed that those names be omitted in reading the first count, and their names do appear in the twentieth count, which is the only count upon which they are now triable. For the record, do you think it is necessary that I again overrule those motions?

Mr. Sharpe: Well, Your Honor would know better than I. I think the record clearly reflected it in various places, that they have been overruled. Your Honor, we would appreciate it if the Court would do so, so the record would be clear.

The Court: I do overrule the motions.

Mr. Sharpe: And the defendants object and except to the action of the Court in that respect.

The Court: Very well, and I want to instruct the United States Attorney that when the indictment is read, that you omit from the first count the reading of the names of O. P. Carrillo and Jesus Oliveira.

Mr. Wilkey: Yes, Your Honor.

The Court: Anything further?

Mr. Sharpe: No, Your Honor. Thank you.

(The following proceedings were had in the presence and hearing of the jury.)

The Court: I will ask that the twelve jurors and four alternates selected now rise and take the oath to try the case of the United States vs. George B. Parr and others.

(The twelve selected jurors, and the four alternate jurors were thereupon sworn.)

The Court: The United States Attorney will now read aloud the indictment for the benefit of the Court, the jury, and the defendants.

Mr. Wilkey: May it please the Court, and ladies and gentlemen: This is the indictment in the case of the United States of America vs. George B. Parr, D. C. Chapa, B. F .(Tom) Donald, Jr., Jesus G. Garza, Santiago Garcia, Octavio Saenz, Jesus Oliveira, O. P. Carrillo, Oscar Carrillo, Sr., The Texas State Bank of Alice, Alice, Texas, and The San Diego State Bank, San Diego, Texas.

The Grand Jury charges:

FIRST COUNT

1. At all times hereinafter mentioned, George B. Parr was President and Chairman of the Board of Directors of both the Texas State Bank of Alice, Alice, Texas, and the San Diego State Bank, San Diego, Texas; during some of the times hereinafter mentioned George B. Parr was County Judge of Duval County, Texas, and during some of the times hereinafter mentioned he was Sheriff of Duval County, Texas; however, at no time hereinafter mentioned did he reside within the boundaries of the Benavides Independent School District, hereinafter called BISD.

2. At all times hereinafter mentioned, D. C. Chapa resided within and was Tax Assessor and Collector of the BISD; during part of the time hereinafter mentioned, D. C. Chapa was a road inspector for Duval County, Texas. D. C. Chapa is the father of Oscar Carrillo, Sr.

3. At all times hereinafter mentioned B. F. (Tom) Donald, Jr. was Cashier of the Texas State Bank of Alice, Alice, Texas.

4. At all times hereinafter mentioned Jesus G. Garza resided within the BISD, during part of the time hereinafter mentioned he was a member of the Board of Trustees of the BISD. Jesus G. Garza is the father of Nita Elda Olsen.

5. At all times hereinafter mentioned, Santiago Garcia resided within the BISD, during part of the time hereinafter mentioned he was a member of the Board of Trustees of the BISD. Santiago Garcia is the father of Maria Elva Garcia, and is the son of Camilo G. Ramirez, who was a member of the Board of Trustees of the BISD during part of the time hereinafter mentioned.

6. During all of the time hereinafter mentioned Octavio Saenz resided within the BISD. During part of the

time hereinafter mentioned, Octavio Saenz was President of the Board of Trustees of the BISD.

7. Not read.

8. Not read.

9. During part of the time hereinafter mentioned, Oscar Carillo, Sr. was Secretary of the BISD.

10. During all of the time hereinafter mentioned, the Texas State Bank of Alice, Alice, Texas, was a banking corporation duly organized and existing under the laws of the State of Texas and was the duly authorized and qualified depository bank for the BISD.

11. During all of the times hereinafter mentioned, the San Diego State Bank, San Diego, Texas, was a banking corporation duly organized and existing under the laws of the State of Texas, but at no time hereinafter mentioned was the San Diego State Bank, San Diego, Texas, a duly qualified and authorized depository for the BISD.

12. During all times hereinafter mentioned, the BISD was a local public corporation organized and existing under the laws of the State of Texas for the purpose of administering the public schools within the District and with the power, through its Board of Trustees, to acquire and hold property, to erect school buildings and to levy taxes.

13. During all of the times hereinafter mentioned, under the laws of the State of Texas, the members of the Board of Trustees of the BISD were in control of the public free schools of such independent district and had the exclusive power to manage and govern said schools in accordance with the laws of the State of Texas.

14. Prior to the first day of September, 1949, and continuing to the twentieth day of February, 1954, the above mentioned George B. Parr, D. C. Chapa, B. F. (Tom)

Donald, Jr., Jesus G. Garzo, Santiago Garcia, Octavio Saenz, Oscar Carrillo, Sr., Texas State Bank of Alice, Alice, Texas, and the San Diego State Bank, San Diego, Texas, all herein indicted as defendants, devised, and intended to devise a scheme and artifice to defraud the BISD, persons obligated by the laws of the State of Texas to pay taxes to the BISD (hereinafter called taxpayers), the State of Texas, and persons obligated by the laws of the State of Texas to pay taxes to the State of Texas, and to obtain the money and property of the BISD and the taxpayers for themselves, their relatives, associates and supporters.

15. It was part of said scheme and artifice to defraud that defendants would make the following false and fraudulent pretenses and representations, well knowing that the pretenses and representations would be false when made:

(a) That BISD checks (also known as vouchers) drawn on the depository bank of the BISD, the Texas State Bank of Alice, Alice, Texas, were issued to persons and concerns for services and materials furnished to the BISD.

(b) That funds of the BISD were disbursed to persons and concerns for services and materials furnished to the BISD.

(c) That the Annual Report of School Funds of the BISD, showing the financial affairs of the BISD as required by Article 301 of the Texas Penal Code, contained a true and correct statement of the receipts and disbursements of the school funds of the BISD.

16. It was further a part of said scheme and artifice to defraud and to obtain money and property by false pretenses and representations that the defendants would

(a) establish and maintain domination and control of the BISD by the defendants George B. Parr, D. C. Chapa,

Oscar Carrillo, Sr., Octavio Saenz, Jesus G. Garza and Santiago Garcia,

(b) establish and maintain control of the Texas State Bank of Alice, Alice, Texas, by George B. Parr, President, Director and Chairman of the Board of such bank, B. F. (Tom) Donald, Jr., the Cashier of such bank,

(c) establish and maintain control of the San Diego State Bank, San Diego, Texas, by its President, Director and Chairman of the Board of Directors, George B. Parr,

(d) mail through the United States Mails tax statements, tax receipts and correspondence concerning taxes to taxpayers of the BISD and the receipt through the United States Mails of tax renditions, correspondence concerning taxes and checks in payment of taxes from taxpayers of the BISD,

(e) obtain money from taxpayers of the BISD and from the State Available Fund of the Treasury of the State of Texas each and every year during the operation of the fraud,

(f) deposit money so received in the Texas State Bank of Alice, Alice, Texas, the authorized depository bank of the BISD,

(g) issue BISD checks drawn on the depository bank and payable to fictitious persons and concerns,

(h) issue BISD checks drawn on the depository bank and payable to persons and concerns neither employed by the BISD nor rendering anything of value to the BISD,

(i) falsify checks and records showing that such checks were issued to persons and concerns for services rendered, for labor and materials furnished, for supplies furnished, for equipment furnished, whereas in truth and in fact,

no such services were rendered, no such labor or materials were furnished, and no such supplies or equipment were furnished for said checks,

(j) forge endorsements on such fraudulent checks where necessary,

(k) cash such checks which would be honored by the depository bank and would be charged by the bank against the account of the BISD on forged endorsements, on genuine endorsements of those persons who were issued fraudulent checks and who were intended by the defendants to receive fruits of the fraud, and in many instances without endorsement,

(l) cash such fraudulent checks at City Utilities of Benavides, Texas,

(m) open accounts in banks other than the authorized depository bank,

(n) deposit tax funds of the BISD in unauthorized bank accounts which would be withdrawn by the defendant D. C. Chapa,

(o) obtain equipment, material and supplies for the personal use of defendants and the use of their associates and supporters, and the payment for same with BISD funds; and would conceal such misuse of the BISD funds by falsifying BISD records and the Annual Reports of School Funds of the BISD.

(p) cash taxpayers' checks payable to the BISD, and would obtain and convert the proceeds of such checks to their own use and would fraudulently issue tax receipts purporting to show the receipt of such funds by the BISD,

(q) prepare the Annual Reports of School Funds showing the financial affairs of the BISD for the fiscal years commencing September 1, 1949 and ending August 31, 1950; commencing September 1, 1950 and ending August 31, 1951; commencing September 1, 1951 and ending August 31, 1952; commencing September 1, 1952 and ending August 31, 1953, said reports being required by Article 301 of the Texas Penal Code, and would show the approval of the annual statement of school funds in such reports by the Board of Trustees of the BISD,

(r) use the United States Mails in transmitting the Annual Reports (referred to in (q) above) to the State Commissioner of Education, Austin, Texas, for filing with the Texas Education Agency (Central Education Agency),

(s) make the pretense and representations in such Annual Reports that the above described fraudulent checks were issued for services rendered, for labor and materials furnished, for equipment furnished, for supplies furnished, whereas in truth and in fact, no such services were rendered and no such labor and materials were furnished and no such equipment or supplies were furnished for such checks,

(t) make pretense and representations in such annual Reports that such Annual Reports correctly showed the receipts and disbursements of the school funds of the BISD whereas, in fact, such reports failed to account for and show the receipt and disbursement of the funds deposited in banks other than the authorized depository bank, and failed to show the receipt of taxpayers' checks which were cashed and the proceeds thereof obtained by the defendants,

(u) conceal the fraudulent misuse of BISD funds by the submission of the above described Annual Reports containing the above described false pretenses and representations to the State Commissioner of Education and the Texas Education Agency (Central Education Agency), the submission of such reports serving to lull the defrauded parties,

(v) cover up the aforesaid acts of the defendants by concealing or destroying cancelled checks, bank statements and other records of the BISD,

(w) cover up the aforesaid acts of the defendants by concealing, spiriting away or destroying the microfilmed bank records of the defendants Texas State Bank of Alice, Alice, Texas, and the San Diego State Bank, San Diego, Texas, said records containing, among other documents pertaining to the financial transactions of these defendants, true and correct microfilm copies of all of the above described fraudulent checks drawn on accounts at said banks, showing the makers' signatures, countersignatures and endorsements thereon, and all checks deposited to the BISD accounts at such banks.

17. On or about the 29th day of September, 1952, in the Houston Division of the Southern District of Texas, and within the jurisdiction of this Court, the defendants, for the purpose of executing the aforesaid scheme and artifice and attempting to do so, caused to be taken from a Post Office a letter addressed to Humble Oil and Refining Company, Houston, Texas, Att'n: Mr. J. A. Mowlam. (Vio. Sec. 1341, Title 18, U. S. Code)

SECOND COUNT

1. The grand jury realleges all of the allegations in the first count of this indictment except those contained in the last paragraph thereof.

2. On or about the 21st day of July, 1952, in the Houston Division of the Southern District of Texas, and within the jurisdiction of this court, the defendants, for the purpose of executing the aforesaid scheme and artifice, and attempting to do so, caused to be taken from a Post Office, a letter addressed to the Humble Oil & Refining Co., Houston, Texas, Attention: Mr. H. L. Stone, Tax Commissioner. (Vio. Sec. 1341, Title 18, U. S. Code)

THIRD COUNT

The grand jury realleges all of the allegations in the first count of this indictment except those contained in the last paragraph thereof.

2. On or about September 29, 1952, in the Houston Division of the Southern District of Texas, and within the jurisdiction of this Court, the defendants, for the purpose of executing the aforesaid scheme and artifice and attempting to do so, caused to be placed in an authorized depository for mail matter in Houston, Texas, a letter addressed to Mr. D. C. Chapa, Tax Collector, Benavides Ind. Sch. Dist., Benavides, Texas, with an enclosure of Humble Oil & Refining Company check Number E59033 dated September 26, 1952, payable to the order of Tax Coll Benavides Ind. Sch. Dist. and in the amount of $43,166.07, to be sent or delivered by the Post Office Establishment of the United States. (Vio. Sec. 1341, Title 18, U. S. Code.)

FOURTH COUNT

1. The grand jury realleges all of the allegations in the first count of this indictment except those contained in the last paragraph thereof.

2. On or about the 23rd day of September, 1953, in the Houston Division of the Southern District of Texas, and within the jurisdiction of this Court, the defendants, for the purpose of executing the aforesaid scheme and artifice, and attempting to do so, caused to be placed in an authorized depository for mail matter, a letter addressed to Mr. Diego Heras, Tax Collector Benavides Ind. Sch. Dist., Benavides, Texas, with an enclosure of Humble Oil & Refining Company check Number F 20395, dated September 24th, 1953, payable to the order of Tax Coll Benavides Ind. Sch. Dist. and in the amount of $53,807.35, to be sent or delivered by the Post Office Establishment of the United States. (Vio. Sec. 1341, Title 18, U. S. Code.)

FIFTH COUNT

1. The grand jury realleges all of the allegations in the first count of this indictment except those contained in the last paragraph thereof.

2. On or about May 27, 1953, in the Houston Division of the Southern District of Texas, and within the jurisdiction of this Court, the defendants, for the purpose of executing the aforesaid scheme and artifice and attempting to do so, caused to be taken from a Post Office a letter addressed to the Humble Oil and Refining Co., Houston, Texas, att'n. Mr. H. L. Stone, Tax Commissioner. (Vio. Sec. 1341, Title 18, U. S. Code.)

SIXTH COUNT

1. The Grand Jury realleges all of the allegations in the first count of this indictment except those contained in the last paragraph thereof.

2. On or about September 28, 1951, in the Houston Division of the Southern District of Texas, and within the jurisdiction of this Court, the defendants for the purpose of executing the aforesaid scheme and artifice and attempting to do so, caused to be placed in an authorized depository for mail matter in Houston, Texas, a letter addressed to Mr. Diego Heras, Tax Collector, Benavides Ind. Sch. Dist., Benavides, Texas, with an enclosure of Humble Oil & Refining Check Number F 50730, dated Sept. 25, 1951, payable to the order of Tax Collector, Benavides Ind. Sch. Dist. and in the amount of $34,285.09, to be sent or delivered by the Post Office Establishment of the United States. (Vio. Sec. 1341, Title 18, U. S. Code.)

SEVENTH COUNT

1. The grand jury realleges all of the allegations in the first count of this indictment, except those contained in the last paragraph thereof.

2. On or about December 4, 1952, in the Houston Division of the Southern District of Texas, and within the jurisdiction of this Court, the defendants, for the purpose of executing the aforesaid scheme and artifice and attempting to do so, caused to be taken from a Post Office, a letter addressed to C. W. Hahl Company, San Jacinto Building, Houston, Texas, att'n. Mr. Dan Shepler, (Vio. Sec. 1341, Title 18, U. S. Code.)

EIGHTH COUNT

1. The grand jury realleges all of the allegations in the first count of this indictment except those contained in the last paragraph thereof.

2. On or about September 28, 1951, in the Houston Division of the Southern District of Texas, and within the jurisdiction of this Court, the defendants for the purpose of executing the aforesaid scheme and artifice and attempting to do so, caused to be placed in an authorized depository for mail matter, a letter addressed to Mr. D. C. Chapa, Tax Collector Benavides Independent School District and in the amount of $544.21, to be sent or delivered by the Post Office Establishment of the United States. (Vio. Sec. 1341, Title 18, U. S. Code.).

NINTH COUNT

1. The grand jury realleges all of the allegations in the first count of this indictment except those contained in the last paragraph thereof.

2. On or about September 21, 1951, in the Houston Division of the Southern District of Texas, and within the jurisdiction of this Court, the defendants, for the purpose of executing the aforesaid scheme and artifice and attempting to do so, caused to be placed in an authorized depository for mail matter, a letter addressed to Tax Assessor and Collector, Benavides Independent School District, Benavides, Texas, with an enclosure of check Number 9907 of the C. W. Hahl Company, dated September 21, 1951, in the sum of $555.25, payable to Tax Assessor & Collector Benavides Independent School Dist., to be sent or delivered by the Post Office Establishment of the United States. (Vio. Sec. 1341, Title 18, U. S. Code.)

TENTH COUNT

1. The grand jury realleges all of the allegations in the first count of this indictment except those contained in the last paragraph thereof.

2. On or about September 27, 1952, in the Houston Division of the Southern District of Texas, and within the jurisdiction of this Court, the defendants for the purpose of executing the aforesaid scheme and artifice and attempting to do so, caused to be placed in an authorized depository for mail matter, a letter addressed to Tax Collector, Benavides Independent School District, Benavides, Texas, with an enclosure of a check Number 10186 of the C. W. Hahl Company dated September 26, 1952 in the sum of $451.70 and payable to Tax Collector, Benavides Independent School District, to be sent or delivered by the Post Office Establishment of the United States. (Vio. Sec. 1341, Title 18, U. S. Code.)

ELEVENTH COUNT

1. The grand jury realleges all of the allegations in the first count of this indictment except those contained in the last paragraph thereof.

2. On or about September 28, 1951, in the Houston Division of the Southern District of Texas, and within the jurisdiction of this Court, the defendants for the purpose of executing the aforesaid scheme and artifice and attempting to do so, caused to be placed in an authorized depository for mail matter, a letter addressed to Tax-Assessor-Collector Benavides Ind. School Dist., Benavides, Texas, with an enclosure of Check No. H 2865 of The Texas Company, dated September 27, 1951, in the sum

of $13,532.64 payable to Tax Assessor-Collector Benavides Ind. School Dist., Benavides, Texas, to be sent or delivered by the Post Office Establishment of the United States. (Vio. Sec. 1341, Title 18, U. S. Code.)

TWELFTH COUNT

1. The grand jury realleges all of the allegations in the first count of this indictment except those contained in the last paragraph thereof.

2. On or about September 26, 1952, in the Houston Division of the Southern District of Texas, and within the jurisdiction of this Court, the defendants for the purpose of executing the aforesaid scheme and artifice and attempting to do so, caused to be placed in an authorized depository for mail matter, a letter addressed to Tax Assessor-Collector, Benavides Ind. School Dist., Benavides, Texas with an enclosure of Check No. H 6467 of The Texas Company, dated September 26, 1952, in the sum of $13,078.72 and payable to the Tax- Assessor-Collector, Benevides Ind. School Dist., Benavides, Texas to be sent or delivered by the Post Office Establishment of the United States. (Vio. Sec. 1341, Title 18, U. S. Code.)

THIRTEENTH COUNT

1. The grand jury realleges all of the allegations in the first count of this indictment except those contained in the last paragraph thereof.

2. On or about September 30, 1953, in the Houston Division of the Southern District of Texas, and within the jurisdiction of this Court, the defendants for the purpose of executing the aforesaid scheme and artifice and attempting to do so, caused to be placed in an authorized

depository for mail matter, a letter addressed to Tax Assessor-Collector, Benavides Ind. Sch. Dist. Benavides, Texas with an enclosure of Check No. H 8255 of the Texas Company dated September 30, 1953, in the sum of $14,665.04 and payable to the Tax Assessor-Collector Benavides Independent School District, Benavides, Texas to be sent or delivered by the Post Office Establishment of the United States. (Vio. Sec. 1341, Title 18, U. S. Code.)

FOURTEENTH COUNT

1. The grand jury realleges all of the allegations in the first count of this indictment except those contained in the last paragraph therof.

2. On or about September 30, 1953, in the Houston Division of the Southern District of Texas, and within the jurisdiction of this Court, the defendants for the purpose of executing the aforesaid scheme and artifice and attempting to do so, caused to be placed in an authorized depository for mail matter, a letter addressed to Tax Assessor-Collector Benavides Ind. School Dist., Benavides, Texas with an enclosure of Check No. 46594 or The Texas Pipe Line Company, dated Sept. 30, 1953 in the sum of $330.84 and payable to the Tax Assessor-Collector, Benavides Independent School District, Benavides, Texas to be sent or delivered by the Post Office Establishment of the United States. (Vio. Sec. 1341, Title 18, U. S. Code.)

FIFTEENTH COUNT

1. The grand jury realleges all of the allegations in the first count of this indictment except those contained in the last paragraph thereof.

2. On or about September 30, 1953, in the Houston Division of the Southern District of Texas, and within the jurisdiction of this Court, the defendants for the purpose of executing the aforesaid scheme and artifice and attempting to do so, caused to be placed in an authorized depository for mail matter, a letter addressed to Benavides Independent School Dist., Benavides, Texas with an enclosure of check No. 1798 of J. E. Beall dated September 30, 1953, in the sum of $415.72, and payable to the Benavides Indep. School Dist. to be sent or delivered by the Post Office Establishment of the United States. (Vio. Sec. 1341, Title 18, U. S. Code.)

SIXTEENTH COUNT

The grand jury realleges all of the allegations in the first count of this indictment except those contained in the last paragraph thereof.

2. On or about October 24, 1952, in the Houston Division of the Southern District of Texas, and within the jurisdiction of this Court, the defendants for the purpose of executing the aforesaid scheme and artifice and attempting to do so, caused to be placed in an authorized depository for mail matter, a letter addressed to Benavides Independent School Dist., Benavides, Texas, with an enclosure of Check No. 1536 of J. E. Beall dated October 24, 1952, in the sum of $355.55, and payable to the Benavides Indep. School Dist. to be sent or delivered by the Post Office Establishment of the United States. (Vio. Sec. 1341, Title 18, U. S. Code.)

SEVENTEENTH COUNT

1. The grand jury realleges all of the allegations in the first count of this indictment except those contained in the last paragraph thereof.

2. On or about June 1, 1953, in the Houston Division of the Southern District of Texas, and within the jurisdiction of this Court, the defendants for the purpose of executing the aforesaid scheme and artifice and attempting to do so, caused to be placed in an authorized depository for mail matter, a letter addressed to Benavides Ind. Sch. Dist. c/o Oscar Carrillo, Benavides, Texas, with enclosure of Statement of Continental Oil Company in account with the BISD dated May 25, 1953 and supporting invoices of A. Caballero, Jr., a dealer of Continental Oil Company, to be sent or delivered by the Post Office Establishment of the United States. (Vio. Sec. 1341, Title 18, U. S. Code.)

EIGHTEENTH COUNT

1. The grand jury reallages all of the allegations in the first count of this indictment except those contained in the last paragraph thereof.

2. On or about April 8, 1953, in the Houston Division of the Southern District of Texas, and within the jurisdiction of this Court, the defendants, for the purpose of executing the aforesaid scheme and artifice and attempting to do so, caused to be taken from a Post Office, a letter addressed to Continental Oil Company, P. O. Box 2197, Houston, Texas with an enclosure of Check No. 32552 of the Benavides Independent School District,

Benavides Local Maintenance Fund, dated March 31, 1953 in the sum of $353.02 and payable to Continental Oil Co. (Vio. Sec. 1341, Title 18, U. S. Code.)

NINETEENTH COUNT

1. The grand jury realleges all of the allegations in the first count of this indictment except those contained in the last paragraph thereof.

2. On or about April 1, 1953, in the Houston Division of the Southern District of Texas, and within the jurisdiction of this Court, the defendants for the purpose of executing the aforesaid scheme and artifice and attempting to do so, caused to be placed in an authorized depository for mail matter, a letter addressed to Benavides Ind. School Dist. c/o Oscar Carrillo, Benavides, Texas, with an enclosure of Statement of Continental Oil Company in account with the BISD dated March 20, 1953, and supporting invoices of A. Caballero, a dealer of Continental Oil Company, to be sent or delivered by the Post Office Establishment of the United States. (Vio. Sec. 1341, Title 18, U. S. Code.)

TWENTIETH COUNT

That commencing on or about September 1, 1949 and continuing thereafter until on or about February 20, 1954, George B. Parr, D. C. Chapa, B. F. (Tom) Donald, Jr., Jesus G. Garza, Santiago Garcia, Octavio Saenz, Jesus Oliveira, O. P. Carrillo, Oscar Carrillo, Sr., the Texas State Bank of Alice, Alice, Texas, and the San Diego State Bank, San Diego, Texas, conspirators and named defendants herein, and Jewel Mayfield and Diego Heras, named as co-conspirators but not indicted herein, in the

Houston Division of the Southern District of Texas, and within the jurisdiction of this Court, did unlawfully, knowingly and feloniously combine, conspire, confederate, agree together, one with the other and with persons to the Grand Jurors unknown, to commit the offenses against the laws of the United States which are fully described and set out in the first count of this indictment, that pursuant to said conspiracy and to effect the objects of said conspiracy, they did the following acts:

OVERT ACTS

1. Each of the Overt Acts alleged in the preceding nineteen counts of this indictment, in the respective dates and places alleged therein.

2. On or about October 4, 1951, the above conspirators caused Tax Receipts A 2663, A 2664, A 2665, A 2666, A 2667, A 2668 and A 2669 of the BISD to be delivered by the United States Mails to the Humble Oil and Refining Company at Houston, Texas.

3. On or about October 11, 1951, the above conspirators caused Tax Receipts A 2717, A 2718, A 2719, A 2720, A 2721 of the BISD to be delivered by the United States Mails to the Texas Company at Houston, Texas.

4. On or about October 7, 1952, the above conspirators caused Tax Receipt 204 of the BISD to be delivered by the United States Mails to the Texas Pipeline Company at Houston, Texas.

5. On or about October 15, 1953, the above conspirators caused Tax Receipts A 472, A 473, A 474 and A 475 of the BISD to be delivered by the United States Mails to the Texas Company at Houston, Texas.

6. On or about September 30, 1952, the above conspirators caused to be deposited in an authorized depository for mail in Houston, Texas, a letter addressed to the Tax Assessor-Collector Benavides Ind. School Dist., Benavides, Texas, with an enclosure of Check No. 22714 of the Texas Pipeline Company, dated Sept. 29, 1952, payable to Tax Assessor-Collector Benavides Ind. Sch. Dist., Benavides, Texas, and in the amount of $325.07.

7. On or about November 12, 1952, Octavio Saenz, J. G. Garza and D. C. Chapa met at a special meeting of the Board of Trustees of the BISD held at Benavides, Texas.

8. On or about January 13, 1953, Octavio Saenz, J. G. Garza, Santiago Garcia and D. C. Chapa met at a special meeting of the Board of Trustees of the BISD held at Benavides, Texas.

9. On or about November 8, 1952, at Benavides, Texas, D. C. Chapa gave one Ramiro Morin Check No. 1536 of J. E. Beal dated Oct. 24, 1952, in the amount of $355.55 and payable to the BISD and instructed him to cash the check at the Merchants Exchange Bank, Benavides, Texas.

10. On or about November 15, 1952, at Benavides, Texas, D. C. Chapa gave Ramiro Morin Check No. 36414 of the Barbara Oil Co. dated Oct. 23, 1952, in the sum of $361.00 and instructed him to cash the check at the Merchants Exchange Bank, Benavides, Texas.

11. On or about November 22, 1952, at Benavides, Texas, D. C. Chapa gave Ramiro Morin the following checks: Check No. 29843 of O. W. Greene dated Sept. 23, 1952 in the sum of $298.43; unnumbered check of

Peal Properties, Laredo, Texas, dated October 29, 1952 in the sum of $230.92, and check No. 715 of Allen Martin, dated October 28, 1952 in the sum of $300.82, and instructed him to cash the checks at the Merchants Exchange Bank, Benavides, Texas.

12. On or about October 17, 1952 at the Merchants Exchange Bank, Benavides, Texas, D. C. Chapa cashed Check No. 66054 of the Jones-Laughlin Supply, dated September 26, 1952 and in the sum of $320.15.

That the acts aforesaid were and are in violation of Section 371, Title 18, United States Code.

The Court: The indictment, with each of its twenty counts, has been read aloud.

I will now call on the defendants to plead thereto.

George B. Parr, how do you plead to each—

Mr. Parr: Not guilty.

The Court: I want to finish my—

Mr. Parr: Pardon me, sir.

The Court. —interrogatory.

How do you plead to each of the 20 counts of the indictment?

Mr. Parr: Not guilty.

The Court: D. C. Chapa, how do you plead to each of the 20 counts of the indictment?

Mr. Chapa: Not guilty.

The Court: You may be seated.

B. F. (Tom) Donald, Jr., how do you plead to each of the 20 counts of the indictment?

Mr. Donald: Not guilty.

The Court: Jesus G. Garza, how do you plead to each of the 20 counts of the indictment?

Mr. Garza: Not guilty.

The Court: Santiago Garcia, how do you plead to Counts 4, 5, 8, 13, 14, 15, 17, 18, 19 and 20 of the indictment?

Mr. Garcia: Not guilty.

The Court: Octavio Saenz, how do you plead to each of the 20 counts of the indictment?

Mr. Saenz: Not guilty, sir.

The Court: Jesus Oliveira, how do you plead to Count 20 of the indictment?

Mr. Oliveira: Not guilty.

The Court: O. P. Carrillo, how do you plead to Count 20 of the indictment?

O. P. Carrillo: Not guilty, Your Honor.

The Court: Oscar Carrillo, Sr., how do you plead to each of the 20 counts of the indictment?

Mr. Oscar Carrillo, Sr.: Not guilty.

The Court: And how does the Texas State Bank of Alice plead to each of the 20 counts of the indictment?

Mr. Foreman: Not guilty, Your Honor.

The Court: And how does the San Diego State Bank plead to Counts 1, 2, 3, 7, 10, 11, 12, 16, and 20 of the indictment?

Mr. Foreman: Not guilty, Your Honor.

The Court: Very well, you may be seated.

Each defendant has entered a plea of not guilty to each count for which he is charged and is triable. Is the Government ready to proceed with its case?

Mr. Wilkey: Yes, Your Honor, the Government is ready.

The Court: I will ask if it is believed that preliminary statements will be helpful.

Mr. Wilkey: From the Government, Your Honor, we have read the indictment, and we believe that it's sufficient.

The Court: Do the defendants believe a preliminary statement will be helpful?

Mr. Foreman: We are willing to waive opening statement, Your Honor.

The Court: Very well. Opening statement will be waived.

It is suggested that all witnesses present come into the courtroom, those who are not in the courtroom, and be sworn as witnesses.

Mr. Foreman: Your Honor, we would like to be furnished with a list of the witnesses that are present, in the event we might desire — I understand there are only about half of them presently present.

The Court: I will hear you on that later, Mr. Foreman.

Are all of the witneses in the courtroom now? Are there any witnesses who do not speak English, or are there any witnesses who are not sufficiently conversant with the English language that they will require the assistance of an interpreter?

Will you ask that question, Mrs. Logan?

(Mrs. Logan, the court interpreter, thereupon addressed the witnesses in the Spanish language.)

Mrs. Logan: Yes, Your Honor, the ones that raised their hands.

The Court: Very well. Mrs. Logan, will you come forward and take the oath to serve as interpreter in this case please?

Mrs. Logan: Yes, Your Honor.

(Mrs. Josephine Logan was thereupon sworn by the Clerk of the Court to serve as interpreter to the Court.

The Court: Mrs. Logan, will you now ask all of those who will require the assistance of an interpreter to hold up their right hand.

(The interpreter thereupon addressed the witnesses in the Spanish language.)

The Court: I count eight. I first want to administer the oath to them through the interpreter. Will you swear them as witnesses through the interpreter?

(The interpreter thereupon interpreted in the Spanish language the oath which was administered by the Clerk in the English language to the witnesses whose hands were raised.)

The Court: Now, will all the others now raise your hands and be sworn as witnesses.

(The Clerk thereupon administered the oath to the remainder of the witnesses.)

The Court: Very well. Is the rule invoked?

Mr. Foreman: Yes, Your Honor, the defendants invoke the rule.

The Court: The rule for the exclusion of witnesses is invoked, which means that all witnesses will remain out of the courtroom until you are called to testify, and will you explain that in Spanish, Mrs. Logan?

(The interpreter thereupon addressed the witnesses in the Spanish language.)

The Court: Very well. The witnesses may now withdraw.

(The witnesses complied with the Court's request.)

I will now hear you, Mr. Foreman.

Mr. Foreman: We would like to have a list, either from the Court or the prosecution, of the witnesses that have

been sworn so as to know who is available, in the event we decide to talk to them, as I understand we have a right to do.

Mr. Wilkey: All of the witnesses, of course, Your Honor, are under a subpoena, and it is a matter of record in the Clerk's Office. I will be happy to furnish Mr. Foreman a list of those who are here today.

The Court: Very well. I suggest it be furnished. The Government may call its first witness.

1-37 T. J. O'CONNOR

a witness called on behalf of the Government herein, having been first duly sworn on oath, testified as follows, to-wit:

1-37 DIRECT EXAMINATION

Q. (By Mr. Bottler) What is your name, sir?
A. T. J. O'Connor.
Q. Where do you live, sir?
A. I live in Austin, Texas.
Q. How long have you lived there?
A. Oh, about twenty-five years.
Q. By whom are you employed?
A. I am employed by the Texas Education Agency.
Q. How long have you been so employed?
A. Oh, about twelve to fifteen years.
Q. What office do you hold with the Texas Education Agency?
A. I am the business manager for the Texas Education Agency.

Q. What are the functions of the Texas Education Agency?

A. To regulate the public schools of Texas.

Q. By what other name is the Texas Education Agency known?

A. The State Department of Education.

Mr. Foreman: Your Honor, we object to that. There is a statutory name for the Texas Education Agency, and as to however else it is known would be hearsay. There is only one legal name for it. It is designated and established by statute.

The Court: What says the Government?

Mr. Bottler: Your Honor: I am trying to just get before the jurors the function and name of the Texas Education Agency, and to clarify matters when it is referred to variously as one thing and another. It will clarify matters—

The Court: If it is known by another name, if it is commonly known by another name, I think it would be proper evidence, and I will overrule the objection. I am not sure it is known by any other name. The witness may know and he will be subject to cross-examination on it.

Q. What is the Central Education Agency?

A. That is the statutory name of the Texas Education Agency.

Q. All right, sir. Now, does the Texas Education Agency keep files on each of the independent school districts in the State?

A. Yes, sir.

Q. Under whose supervision and control were those files in the years 1949 through 1954?

A. Under my supervision and control.

Q. Were the files on record of the Texas Education Agency, which were kept under your control and supervision, correctly and currently kept in those years.

A. Yes, sir.

Q. Was it part of the regular course of business of the Texas Education Agency to keep those files?

A. Yes, sir.

Q. I will hand you what has been marked for identification as Government's Exhibit No. 1, and ask you if you can identify it?

(Government's Exhibit 1, document above referred to, was tendered to the witness.)

A. It is the Annual Report of School Funds of the Independent School District, of the Benavides Independent School District.

Q. Would you speak up, please?

A. It is the Annual Report of School Funds of the Benavides Independent School District made by the —

Q. For what period?

A. For the period of 1949 and '50.

Q. All right, and that is for the scholastic year?

A. Ending August 31, 1950.

Q. Is that 1950?

A. Yes, sir.

Q. Now, did this report come from your files of the Texas Education Agency?

A. Yes, sir.

Q. All right, sir. I will hand you what has been marked for identification as Government's Exhibit No. 2 and ask you if you can identify it.

(Government's Exhibit 2, the document above referred to was handed to the witness.)

A. This is the same report for the fiscal year ending August 31, 1951.

Q. Was that part of your files of the Texas Education Agency?

A. Yes, sir.

Q. I will hand you what has been marked for identification as Government's Exhibit No. 4, and ask you if you can identify that.

(Government's Exhibit 4, above referred to, was handed to the witness.)

Mr. Foreman: What is that, four?

Mr. Bottler: Yes.

Mr. Foreman: Three is there?

Mr. Bottler: Yes.

Mr. Foreman: Thank you.

A. That is the same report for the fiscal year ending August 31, 1952.

Q. And did that Annual Report come from your files of the Texas Education Agency?

A. Yes, sir.

Q. I will hand you what has been marked for identification as Government's Exhibit No. 5, and ask you if you can identify that.

(Government's Exhibit 5, above referred to, was handed to the witness.)

A. This is the same report for the fiscal year ending August 31, 1953.

Q. Is that taken from your files?

A. Yes, sir.

Q. I will hand you what has been marked for identification as Government's Exhibit 3, and ask you if you can identify that.

(Government's Exhibit 3, above referred to, was handed to the witness.)

A. The same report for the fiscal year ending August 31, 1954.

Q. All right, sir. Now, were all of these reports part of your fiscal files of the Texas Education Agency?

A. Yes, sir.

Q. Looking on the interior of the second page of Government's Exhibit 1, I will ask you if you can identify those two yellow pages which appear there?

A. That is a carbon copy of a letter written by T. J. O'Connor, after a review of the —

Mr. Foreman: If it please the Court, we will object to it being put into evidence. The question is can he identify it, not what it contained. It would be the best evidence of what it contained, and we might have an objection to getting the contents in by identification, without having offered the original.

Q. Can you identify it, sir?

A. It is a letter written on April 19th concerning an annual report.

Mr. Foreman: May it please the Court, we are objecting to his stating what it is. The question is, can he or can he not.

The Court: The question is, can you identify. You should answer you can or you cannot. You haven't been asked what it is. You were asked, can you identify it.

A. Yes, sir. I misunderstood.

Q. State whether or not it is a carbon copy of a letter.

A. It is a carbon copy of a letter.

Q. What was done, if anything, with the original of this letter?

A. The original of the letter was addressed to the — sent to the Texas State Bank of Alice, with a copy to the President of the School Board of the Benavides Independent School District.

Mr. Foreman: We are objecting to that statement, if it is based on hearsay, Your Honor, unless this man knows it. If he is assuming it from what he sees, we object to it and instruct the jury —

The Court: I think it should be developed whether he states from hearsay knowledge or from his own knowledge, and if it is from his own knowledge, how he knows it.

Q. You wrote that letter and signed it?

A. I wrote the letter and signed it.

Q. Do you know, of your own knowledge, whether it was mailed and a carbon copy made?

A. To the best of my knowledge, the original of the letter was mailed to the Alice — to the State Bank of Alice, and to the President of the Benavides Independent School District.

Mr. Foreman: May I have him on voir dire to determine, in view of his qualifications, to the best of his knowledge?

The Court: You may, sir.

1-44 VOIR DIRE EXAMINATION

Q. (By Mr. Foreman) Mr. O'Connor, do you have an independent recollection of having written that letter, other than from what you see of the copy, as it is in this report.

A. I believe that I do.

Q. And do you have an independent recollection of its being mailed, independent of what you see there and assumed from the fac[illegible]at it was written.

A. Yes, I believe that I do.

Q. You remember putting the stamp on it and placing it in a receptacle?

A. I don't remember putting the stamp on it because it is put through a postal machine.

Q. Do you remember its going through the postal machine?

A. I don't, because it went through with a lot of other matters.

Q. You assume it was mailed because mail is usually put through the machine, is that not true.

A. That is true.

Q. And you don't have any recollection of its being mailed?

A. Not having seen it physically, no, sir.

Mr. Foreman: We object to his stating it was mailed.

The Court: The objection is sustained, and the jury is instructed not to consider the statement it was mailed.

1-45 DIRECT EXAMINATION

Q. (By Mr. Bottler) Was this letter put in the usual manner you send out mail?

Mr. Foreman: Object to the form as leading and suggesting.

The Court: Objection sustained.

Q. What did you do with this letter and the carbon copy after you signed them?

A. I handed it to the secretary for mailing.

Q. Allright, and how do you usually send out your correspondence?

A. In the same manner. The mail is taken to the mail room, and run through a postage meter for mailing three times a day.

Q. All right. Now, what did you do with the Annual Report of School Funds after they came in to the Texas Education Agency?

A. They were examined and compared with revenues transmitted to the depository bank, according to the records in the office.

Q. All right. Now, from what independent school dis-

tricts did you receive annual depository reports in the years 1949 through 1954.

A. All independent school districts were required to make annual reports of school funds.

The Court: Mr. O'Connor, I will ask that you keep your voice sustained. You have a habit of letting your voice fade away, and it is important that everyone hear you, so will you keep your voice sustained?

A. I will try.

Q. Who supplied the blank forms for those annual reports, such as Government's Exhibits 1 through 5?

A. They were supplied, printed by the Texas Education Agency under authority of the Commissioner of Education.

Q. And what did you do with the blank forms for these annual reports?

A. Blank forms are mailed to the depository banks for compiling the reports.

Q. All right. No, after you have made your examination of the annual reports each year, what would be your procedure in the event that your examination or internal audit should reflect there had been a misapplication or misappropriation of funds?

Mr. Foreman: We object to that as a general hypothetical question not material to the allegations or specifications in the various counts of this indictment.

The Court: I believe what you want to ask, Mr. Bottler, is what was your procedure, is it not?

Mr. Bottler: Yes, Your Honor.

The Court: Your question is what would be your procedure.

The objection is sustained.

Q. What was your procedure in the years from 1949 through 1954, in the event that your examination of the annual reports of the school district reflected there had been a misappropriation or misapplication of funds?

A. We write to the bank in the school district, requesting an explanation, and if a satisfactory explanation is not given, we withhold funds until a satisfactory explanation can be given.

Q. All right, sir. I will hand you Government's Exhibits 6, 7 and 8, and ask you first, can you identify Government's Exhibit No. 6?

(Government's Exhibits 6, 7 and 8, above referred to, were handed to the witness.)

A. No. 6 is the depository bond for the Benavides Independent School District with the Texas State Bank of Alice.

Q. Is that the original or a certified copy?

A. This is a certified photostat of the original.

Q. What is No. 7?

A. No. 7 is the depository bond with the Texas State Bank of Alice for the Benavides Independent School District for the period ending August 31, 1953.

Q. What is No. 8?

A. No. 8 is the depository contract with the Texas State Bank of Alice for the Benavides Independent School District for the biannum ending August 31, 1955.

Q. Now, with reference to the carbon copy of the letter about which you were interrogated earlier, contained as part of Government's Exhibit 1, I will ask you whether—where you keep correspondence, carbon copies of correspondence, pertaining to the annual report of school districts in your files?

A. They are kept with the annual reports.

Q. And is that procedure part of your regular course of business with keeping your files.

A. Yes, sir.

Mr. Bottler: Your Honor, the Government offers into evidence Government's Exhibit Nos. 1, 2, 3, 4, 5, 6, 7, and 8.

Mr. Foreman: Show us that yellow sheet.

Mr. Bottler: That is Exhibit No. 1.

The Court: Will your examination take long, Mr. Foreman.

Mr. Foreman: It will take a few minutes, three, or four or five or ten minutes, maybe.

The Court: Very well. I will suggest a recess. I want to give you a recess too. We will recess for twenty-five minutes, and that will give you an opportunity to make such examination of those documents as you wish.

However, before the recess, this will be the first recess the jury has had since you were impanelled. I want to give the jury some instructions, and these instructions will hold throughout the trial of this case. During the trial of this case, you will not discuss this case with anyone, you will not permit anyone to discuss it with you. If anyone at-

tempts to discuss it with you, you should ascertain who it is and report it to the Court, but even though you may be unable to ascertain who it is, it should nevertheless be reported to the Court. You should not discuss the case with each other, and you should not come to any conclusion regarding the case until you have heard all of the evidence, and the argument of counsel, and the charge of the Court, when you will then retire to discuss and consider your verdicts. Furthermore, you should not carry on any conversations in the halls, or elsewhere, with any of the defendants, any of the witnesses, any of the attorneys. Such conversations may be perfectly innocent, but they lead to mistrials, and that we want to avoid.

I will state again that these instructions will hold throughout the trial of this case, and with these instructions, the Court is recessed for twenty-five minutes.

(Short recess.)

The Court: Be seated, please.

Mr. Sharpe: If Your Honor please, the defendants object to Government's Exhibit 1 for the following reasons: The purported report covers a period of time beginning September 1, 1949, and ending August 31, 1950. That period of time and those dates are beyond any conceivable period of limitation which might apply in this case. The remotest date which might be applicable being September 1, 1951. The exhibit is offered generally as to all defendants, and it is not limited in the Government's tender, and on its face it shows that it is not properly admitted as to all defendants, and in part shows that on behalf of the Texas State Bank of Alice, duly signed by one Jewell Mayfield, who is not a defendant in this case, but is named

as a co-conspirator on the twentieth count and not indicted, and it is signed purportedly by Octavio Saenz. It is the defendant's position, first of all, that this report is not admissible as to any of them. It has not been authenticated as to either signature, either the position or the authority of Miss Mayfield or Mr. Saenz. Alternatively, and only in the alternative, it would be admissible only as to the Texas State Bank and Mr. Saenz as to a limited purpose, which is not stated by the Government, and is not admissible for all purposes, and it is objectionable for those reasons.

Further, we object to it for the reason, if it has been identified by this expert, this witness, it would show only that this exhibit was found in his files, and does not show the time, the manner of its preparation, and it therefore has not been duly authenticated. For all these reasons, Your Honor, we object to Government's Exhibit No. 1.

The Court: What says the Government?

Mr. Bottler: The Government says Exhibit 1 is identified sufficiently by the witness, T. J. O'Connor. It was taken from his official records of the Texas Education Agency, prepared and kept in the regular course of business as being an Annual Report of the Benavides Independent School District which is, of course, one of the subject matters of this lawsuit, this case against the defendants. The submission of the annual reports is a material fact, as set out in the indictment, and the fact that it is in the official file of the education agency, kept in the regular course of business, proves up the submission of the Texas State Bank and Octavio Saenz. As to the rest of the defendants, it constitutes a material fact, having

been alleged in the indictment that it was filed with the Texas Education Agency.

Mr. Wilkey: I might add, Your Honor, in regard to the time here alleged, the time of report No. 1, is from September 1, 1949, which is the time alleged in the indictment on counts 1 through 19 as the beginning of the scheme to defraud, and also the beginning of the time alleged in the conspiracy count, count 20. As Your Honor well knows, on a conspiracy or scheme to defraud, as far as applicability of the statute of limitations goes, if any act, overt act, takes place within the limitation time, any acts preceding it may be shown, and these exhibits, 1 begins on September 1, 1949, which is the first date alleged in the indictment, and is therefore pertinent and relevant to that extent.

Mr. Sharpe: May I reply to that statement?

The Court: I want Mr. Wilkey to finish.

Mr. Wilkey: One other point. Mr. Bottler mentioned the official nature of the report, as testified to by Mr. O'Connor. I would point out, Mr. O'Connor has testified as to the manner and requirement of this report being submitted to the agency, and as to the time, the report speaks for itself. Thank you.

Mr. Sharpe: If Your Honor please, if all we had here in any of the indictment counts, was an allegation or allegations from sometime in 1949 to September 1, 1951, there would be nothing before this Court that could be tried. This exhibit does not relate to any date in the indictment that will connect it, date or dates that are connected with the mailing of a letter or the use of the mails,

and we say further that it is an attempt on the part of the Government to actually show other claimed similar offenses, which have no materiality, no relevancy, to what is actually alleged in the indictment counts itself.

The Court: Is it connected with the other bank?

Mr. Sharpe: No, Your Honor. We objected as to all defendants, as to admissibility, and alternatively, it could only possibly be admissible, if for a proper purpose, against the persons whose names are signed thereon.

Mr. Wilkey: We will not urge its admissibility against the other bank, Your Honor.

The Court: The San Diego Bank? The objection is overruled, and Government's Exhibit No. 1 is admitted in evidence, and the jury is instructed that Government's Exhibit 1 is not in any way to be considered insofar as it pertains to the charges against the San Diego State Bank.

Mr. Sharpe: As I understand, Your Honor, correctly, it can be considered as to all other defendants?

The Court: It can be considered as to all other defendants.

Mr. Sharpe: Yes, sir. As to Government's Exhibit 2, Your Honor, we object—

The Court: Are there any of those that can be grouped together for consideration?

Mr. Sharpe: Your Honor, the only ones that relate to a date prior to 1951 would be Government's Exhibit 1 and Government's Exhibit 2. The others are all after that time, and I expect I can state it about as rapidly in that instance as I could by grouping it.

The Court: Is your objection now to Government's Exhibit 2?

Mr. Sharpe: Yes, sir, for the reason that on its face, it purports to cover a period of time from September 1, 1950, to August 31, 1951, and is therefore beyond any limitation period which could be applicable to this case, and it not related to any specific indictment, count, for use of the mails. Secondly, it is purportedly signed by Jewell Mayfield on behalf of the Texas State Bank of Alice. Her signature has not been authenticated, her position and authority have not been shown in the record at this time. Exhibit 2 is purportedly signed by Octavio Saenz. In this case, the signature is simply signed on behalf of the Benavides Independent School District, and neither his authority or his signature have been authenticated. It is our position, Your Honor, that at most, that exhibit would be admissible under this witness' testimony to show that it was found in the files of the Texas Education Agency.

The Court: What says the Government?

Mr. Bottler: The Government's answer is the same as made to the objection to Government's Exhibit 1.

The Court: And does it have any bearing on the case against the San Diego State Bank?

Mr. Wilkey: No, Your Honor, and in the interest of time, I would like to notify counsel the Government's offer of these exhibits in line with Your Honor's ruling, on Exhibit 1, 2, 4, and 5 are offered against all defendants except the San Diego State Bank.

The Court: Well, Government's Exhibit 2 is admitted. Objection overruled and Government's Exhibit 2 is admitted against all defendants except the San Diego State Bank.

Mr. Wilkey: Now, in regard to Government's Exhibit 3, that while it is numbered out of sequence, just by chance, that annual report covers a period during part of the indictment time, and extending past the time covered by the indictment to, I believe, August 31, 1954.

Mr. Sharpe: That is correct.

Mr. Wilkey: We offer that as against the defendant Tom Donald, whose purported signature is on that Exhibit 3, and as against the Texas State Bank it was also filed against the two defendants only.

The Court: What says the defendant?

Mr. Wilkey: Against these two defendants, Tom Donald and the Texas State Bank of Alice.

Mr. Sharpe: Your Honor, please, we have some additional objections to Government's Exhibit 3.

The Court: Very well, sir.

Mr. Sharpe: The period of time set out on the back page is from September 1, 1953, ending August 31, 1954. The last mentioned date is some seven or eight months beyond the last date which is mentioned in any indictment count, the last date mentioned in the indictment being February, 1954, therefore this exhibit, on its face, would show that it applied for a period of time when the school—which is not placed in issue in the indictment, and it is our position, if the Government desires to offer a por-

tion of that, that they should indicate what portion is offered within the dates limited by the indictment, and that the rest should be excluded. In addition, this particular exhibit, No. 3, is not signed by any defendant except the Texas State Bank of Alice, purportedly by B. F. (Tom) Donald, Jr., and it is our position it would not be admissible even as to the bank and Mr. Donald without authentication of signature, or his position, and certainly would not be admissible as to any other defendant.

This exhibit is different, Your Honor, in this respect from other exhibits. There is not any signature whatever on the purported approval of the School Board in this case, and further urged, if it is admissible at all, it is for the sole purpose of showing it was found in the Texas Education Agency files.

The Court: Government's Exhibit 3 is offered only as against the Alice Bank and Mr. Donald, and it is admitted as to those two defendants only, and the jury is instructed Government's Exhibit 3 will be considered only insofar as it relates to the case against B. F. (Tom) Donald, Jr. and the Texas State Bank of Alice.

Mr. Sharpe: Your Honor, in connection with Government's Exhibit 4, the defendants object to it and its admissibility for the purpose that it would not be admissible as to all of the defendants. It shows on its face that it is purportedly executed only by Jewell Mayfield for the Texas State Bank of Alice, and O. Saenz as President of the Benavides Independent School District Board, and that first of all, it is inadmissible to all defendants, and alternatively, should be admitted only as to those two defendants.

The Court: What says the Government as to Exhibit 4?

Mr. Bottler: We are offering Government's Exhibit 4 as against all defendants with the exception of the San Diego State Bank, and we say that the same argument applies to 4 as applied to Government's Exhibit 1.

The Court: Objection overruled, and Government's Exhibit No. 4 is admitted as to all defendants except the San Diego State Bank.

Mr. Sharpe: Your Honor, in connection with Government's Exhibit 5, the period covered is September 1, 1952 to August 31, 1953. This report is purportedly signed by only Jewell Mayfield in behalf of the Texas State Bank of Alice, and Octavio Saenz on behalf of the Benavides Independent School District Board. That is the wording of the form. All of the defendants object to its admissibility, and alternatively that it is admissible, if for any purpose at all, only against the Texas State Bank of Alice and Octavio Saenz.

The Court: What says the Government?

Mr. Bottler: The Government's offer is limited to all of the defendants with the exception of the San Diego State Bank. We offer it against all except the San Diego State Bank. The argument is the same as with respect to Government's Exhibit 1.

The Court: The objection is overruled, and Government's Exhibit No. 5 is admitted as against all defendants except the San Diego State Bank.

Mr. Sharpe: Your Honor, with reference to Government's Exhibit No. 6, we object to it first because it is

shown on the face of the depository bank contract, in the acknowledgement of it, that it was executed August 6, 1949, which would be more than two years prior to any limitation date which would be applicable in this case, and therefore it would not be admissible as to any defendants for any purpose. Next, it purportedly only is signed by the Texas State Bank of Alice, by B. F. Donald, Jr., but the exhibit as tendered here, is simply a photostatic copy, not the original, and Mr. Donald's signature or his authority to act for the Texas State Bank of Alice has not been proven.

The Court: What says the Government?

Mr. Bottler: I don't understand. Are you objecting to this, among other reasons, because it is a photostatic copy or certified copy rather than the original? Is that one of the objections?

Mr. Sharpe: No, not necessarily. It is the signature has not been authenticated and the authority not stated. I don't make it on the form of the instrument.

Mr. Bottler: The Government says this comes from the official files of the Texas Education Agency, kept in the regular course of business, showing this as the depository bond of the Benavides Independent School District, a material fact as alleged in the indictment.

The Court: Objection overruled, and Government's Exhibit 6 is admitted in evidence.

Mr. Sharpe: Your Honor, as to Government's Exhibit No. 7, the defendants object for the reason that it is not admissible against all of the defendants, being purportedly signed only by B. F. Donald, Jr., the Texas State Bank of

Alice, and alternatively, it would be admissible against the bank and defendant Donald only. As far as the date is concerned, it is purportedly executed on December 3, 1951, which would be within the limitation of time. Further, that the signature and authority of Mr. Donald has not been proved.

The Court: What says the Government?

Mr. Bottler: The Government's reply is the same as to the immediately preceding exhibit. This is part of the official file, kept in the regular course of business of the Texas Education Agency, showing a depository bond, and period covered thereby as a material fact.

The Court: Objection overruled, and Government's Exhibit 7 is admitted in evidence.

Mr. Sharpe: Your Honor, with reference to Government's Exhibit 8, the defendants object and except, object to its admissibility in evidence for the reason it is purportedly signed by Mr. G. A. Parr, not George B. Parr, the defendant, but G. A. Parr on behalf of the Texas State Bank of Alice. The signature has not been authenticated, his authority to act has not been proven in this case.

The Court: What says the Government?

Mr. Bottler: The answer is the same as to the immediately preceding exhibit.

The Court: Objection overruled, and Government's Exhibit 8 is admitted in evidence.

Mr. Bottler: The Government now offers into evidence exhibits from the Annual Reports of School Funds, Gov-

ernment's Exhibit 1, 2, 4 and 5, being a summary and exact copy of items appearing therein, Government's Exhibits 9 and 10.

(Government's Exhibits 9 and 10, above referred to, were handed to the Clerk.)

Mr. Sharpe: If the Court pleases, we object to the exhibits as tendered for this reason, it is not shown by whom they were prepared, by whom the compilation was made. These have not been authenticated. They are, at best, an argument prepared by someone who has not taken the witness stand as to what these original documents, which have been admitted in evidence, show. The original documents are before this Court and jury, and they should serve the purpose of Government's counsel without argument and compilation at this time, especially when it is not shown to the Court how those were made. We object, therefore, separately to Government's Exhibits 9 and 10. What is contained, according to the representation that has been made, in 9 and 10, is already before the Court in Exhibits 1 through 5.

The Court: May I see Government's Exhibits 9 and 10, please?

(Government's Exhibits 9 and 10 tended to the Court by the Clerk.)

Mr. Wilkey: Your Honor, those Exhibits 9 and 10 were, line for line, taken from the official report, 1, 2, 4, and 5. They are a shorthand rendition of those lines of the report which will become relevant and pertinent in the trial of this case.

The Court: Are they summaries?

Mr. Wilkey: Yes, sir, they are, and the defense has had an opportunity fully today and previously to inspect each line and page of those summaries, 9 and 10, taken from the annual reports Exhibits 1, 2, 4 and 5. They will save an enormous amount of time, being summaries so we do not have to refer back and thumb through the numerous pages of the report when the relevant information is there printed on Exhibits 9 and 10.

The Court: Now, were these summaries prepared by Mr. O'Connor?

Mr. Wilkey: No, Your Honor. They were prepared in our office, taken from those official reports. We do not offer them as being official documents themselves, but merely summaries of the official documents which will facilitate the presentation of the case, and the defendant has had an opportunity to inspect and satisfy themselves of the accuracy of the transcription made.

Mr. Foreman: May it please the Court, in addition to the object heretofore made to Exhibits 9 and 10, we object to them as being self-serving declarations on the part of the prosecution, prepared outside of the presence of the defendant, and any of their counsel, by someone whose identity has not ever been revealed, by an unsworn witness not subject to cross-examination, and therefore is hearsay, and the form, sir, of the—in which it is offered is a summary of the prosecution's case, likewise prepared out of the presence and hearing of the defendants, and we object to it as a matter of form and do not concede that, whether or not they are accurate or not, authorizes the prosecution to prepare ex parte and in their own of-

fices whatever it thinks is important, and then present it in condensed and concentrated form apart from the official documents that have heretofore been offered, and which prosecution, itself, says carried the same information that Exhibits 9 and 10 carry.

Mr. Bottler: If Your Honor please, if there is any question as to the accuracy of the information contained in these Exhibits—

The Court: They may be checked and changed?

Mr. Bottler: They may be checked and changed this evening.

The Court: Summaries are generally accepted as being proper and helpful. We have a blackboard in the courtroom, and it is often used in making visual summaries of evidence, and I will admit Government's Exhibits 9 and 10 with instructions to the jury they are not original evidence, but are summaries.

Q. (By Mr. Bottler) Now, Mr. O'Connor, from what funds are monies distributed to the various independent school districts of the State?

A. From the Foundation Fund, and the Available School Fund.

Q. Now, in the event that an annual report is submitted to you, and your examination shows that it appears to be correct, what is done with respect to the disbursement of those funds?

A. I didn't quite understand your question.

Q. During the years 1949 through 1954, if your examination or audit of the annual report of the School District reflected no discrepancy, it appeared to be correct,

what would be done with respect to the disbursement of the school funds and State available funds?

A. They would be sent to them in the normal way.

Q. All right, and what would happen if the annual report was incorrect?

A. The funds would be withheld temporarily until satisfactory explanation from the school officials would be given.

Mr. Bottler: No further questions.

1-66 CROSS EXAMINATION

Q. (By Mr. Foreman) And who was responsible for this audit and examination of the annual reports, Mr. O'Connor, of the various independent school districts of the State of Texas?

A. The business office of the Texas Education Agency.

Q. And what individual?

A. I was responsible for the reports, approval or disapproval of them.

Q. Speak a little louder.

A. I was responsible for the reports, approval or disapproval of them with—I had an assistant who examined them.

Q. And did you likewise examine them?

A. I examined, sir, likewise, and the reports, that is, these reports, in which we had letters written, I examined the reports and went over them before I signed the letter.

Q. The auditing and examination referred to by the prosecution was done under your direction and supervision, and in your office?

A. Yes, sir.

Q. Who was the actual auditor, your assistant as you call him, from the year 1949 to 1954, if it were the same person?

A. Mr. O'Shawnessy.

Q. What is his first name?

A. Michael Emmett O'Shawnessy.

Q. And he was there the entire time from 1949 through 1954?

A. I believe he was, sir.

Q. Then, you yourself are not testifying as to any audit or examination, except as to Mr. O'Shawnessy's audit and examination.

A. From his work papers, yes, sir.

Q. Do you have his work papers there?

A. No, sir, they are attached to those reports there. I believe I saw them.

Q. But Mr. O'Shawnessy, himself, would better know what examination and audit he made, would he not, than you?

A. I wouldn't say that.

Q. Did you work along side him, or in the same office?

A. We worked in the same office, yes, sir.

Q. Now, how many independent school districts in Texas are there, sir, over which you have supervision?

A. I believe there are approximately 900.

Q. Covering the entire State?

A. Independent districts, yes, sir.

Q. And in addition to that, there are common school districts?

A. I think, totally, in all districts and in the State, it fluctuates between 16 and 1800.

Q. And you had to do this same work for all of those 16 or 1800 common and independent school districts?

A. Yes, sir.

Q. The same type forms, and the same type reports?

A. Yes, sir.

Q. And you wrote letters whenever there was anything wrong with any audit.

A. Whenever we needed to—we were not clear on what they were reporting, yes, sir.

Q. And if there were anything wrong with any of the reports, other than the ones shown here in Exhibit 1, there would be a lettter, presumably, in the front of such annual report just as there are in Exhibit 1, would there not, sir?

A. I assume there would, yes, sir.

Q. Now, except for Exhibit 1, covering the period of time ending August 31, 1950, do you find any such letter, please, sir?

A. You mean in that one, sir?

Q. Here is a letter, but it doesn't have anything to do with the audit. I believe this goes on the back of that. We had better clip it there.

A. This is an inquiry concerning the report.

Q. Pardon me. I didn't ask what it was. It didn't have anything to do with objections raised by you as to the authenticity of the correctness or incorrectness as revealed by this audit.

A. You are correct.

Q. That was No. 2. In No. 5, there is no letter at all. Presumably no objection when that was audited.

A. No, sir, correct.

Q. Correct, sir, and No. 2, the period ending August 31, 1951, there is no letter, and presumably no objection to the audit.

A. None I can ascertain.

Q. Thank you, sir. By the way, I am going to ask you in a minute to find certain vouchers in there.

With regard to the letter about which you were asked, and which you testified you had an independent recollection of writing as to Exhibit 1, the yellow sheet referred to when Mr. Bottler was questioning you, please tell us when you wrote that letter.

A. I don't believe I have the report with Exhibit 1, sir.

Q. This is the letter about which I inquired. That is the one Mr. Bottler showed you?

(Tendering the above mentioned document to the witness.)

A. Yes, that is it.

Q. It is Exhibit 1, is it not, sir?

A. It appears to be, because I have the others all here.

Q. I admit you do not have it. I am asking you as to your recollection, sir, when you wrote the letter that you remember writing.

A. When I wrote the letter?

Q. Yes, sir.

A. I signed the letter. The letter was dictated and written by Mr. O'Shawnessy, and I read the letter and signed it. That is what I meant by writing the letter.

Q. Then you didn't write the letter, Mr. O'Shawnessy wrote it.

A. Yes, sir.

Q. Did you read it?

A. Yes, sir, I did.

Q. Do you recall what it said?

A. It took exception to some expenditures from some of the funds. I didn't recall right now just exactly the language in the letter.

Q. You knew the very fact that it was a letter, that it would need to have been about that, whether you recalled or not? The fact that there was a letter there would suggest about what it was written, would it not?

A. Not necessarily.

Q. Allright, then, regardless, when did you sign the letter that Mr. O'Shawnessy wrote?

A. April 19.

Q. What year?

A. I don't recall the year. I believe it was 1952.

Q. 1952?

A. 1950.

Q. Allright. Now, you are sure it wasn't 1952.

A. It was a long time ago, Mr. Foreman.

Q. You remember it was April 19th, but you don't know what year.

A. I am not positive.

Q. You can't come within three years of the year, but you can come to the exact date?

A. I recall seeing that date.

Q. The reason you recall April 19th is because that is the date you saw awhile ago.

A. Yes.

Q. In other words, you would have been able to say within five years of when you signed that letter, Mr. O'Connor.

A. I am sure that I would have.

Q. I am only asking these questions to test your recollection, and so as to establish whether or not you are testifying from the contents of the letter as distinguished from your independent recollection. Do you know what day of the week April 19th was, that you signed this letter.

A. No, I do not.

Q. You do not know whether it was on Sunday or not.

A. I know it wasn't on Sunday. You wouldn't get me up in the office to sign a letter on Sunday.

Q. Except for that, you don't know whether it was on Sunday or not.

A. No, sir, I don't.

Q. Actually, how many letters have you written since 1950 when you say you signed this letter on April 19th? That is your present date, is it not, sir, April 19th, 1950.

A. That is what I recollect.

Q. How many letters have you signed of a similar nature, to the 16 or 1800 school districts of Texas, sir?

A. I haven't any idea.

Q. Probably in the thousands, isn't it.

A. Oh, it could be.

Q. Now, and yet you do have, or do you, Mr. O'Connor, an independent recollection, aside from what you read in the letter itself or saw attached to the Exhibit 1, do you actually have an independent recollection of signing this particular letter?

A. Not that particular letter.

Q. You don't ever recall having seen the letter except as you identified it here as part of this procedure of your office, do you?

A. I wouldn't say that.

Q. Well, do you have any independent recollection of it whatever, except for whatever you may have obtained since you started testifying in this—

A. That particular letter?

Q. Yes, sir, that particular letter.

A. No, sir.

Mr. Foreman: All right, then, we ask the jury be instructed not to consider his testimony with reference to the fact that he signed and mailed this letter.

The Court: What says the Government?

Mr. Wilkey: Well, Your Honor, any witness can testify from a document that his memory has been refreshed from, seeing that document, and he knows because it is in his files that action was taken on it, because it is in his files, which, as I understand it, that is all he is required to testify.

The Court: The testimony is that it is from the office of the Texas Education Agency. The witness, Mr. O'Connor, testified he is the business manager, that he has been in that office fifteen years, and it may be received in evidence, and it is received in evidence as records kept in the usual course of business, to which he testified, however, the jury may consider it in the light of all of the testimony.

Mr. Foreman: It was his testimony to the effect that he signed and mailed the letter we are objecting to. It was already in evidence as part of this record. I was not objecting to the letter itself. That has already been objected to, but it is his testimony as to what he did with this letter, that he recalls signing it, that I was objecting to, so it is directed to his independent recollection of having mailed the letter.

The Court: Objection overruled, and the jury may consider all of his testimony in determining what weight to be given to it.

Q. (By Mr. Foreman) Now, Mr. O'Connor, how long have you had your present position.

A. My present position, since 1951.

Q. And in the office, did you have Mr. O'Shawnessy's position before then?

A. Well, no, sir—yes, sir, I did, I did. I believe Mr. O'Shawnessy came in the office in 1950. There was a consolidation because of the foundation act, which confuses the issue, as far as I am concerned.

Q. You are sure this letter was not written in 1951, are you not, sir?

A. Well, there was a letter written on the annual reports for 1949 and 1950, and that report would be due on October 1st. I would assume it was written in 1950.

Q. But it is dated 1951, isn't it?

A. It surely is.

Q. Then you don't really recall very much about it, do you Mr. O'Connor?

A. Sir?

Q. You don't really recall much about it.

A. Yes, sir, I recall quite a bit about it. I have been reminded about it a great deal.

Q. Now, Mr. O'Connor, actually all that that letter objects to is one item of $451.84 of lunch reimbursement from the State transferred — not being transferred from the local maintenance fund. That is all it objects to, isn't it?

A. Yes, sir.

Q. Not a single objection as to any other item.

A. No, sir.

Q. I give you all of the exhibits now.

(Counsel tendering documents to the witness.)

I want to call your particular attention to certain items on certain lines in these exhibits please, sir. You will have to determine in which exhibit it would be from the ending period there. It is the year ending August 31, 1951, if you will find that exhibit please, sir. I think it is Exhibit 2. Is that correct?

A. Yes, sir.

Q. And I want you to find an item listed under the heading Benavides Independent School District, Building Fund No. 3, and it is voucher No. 29388, dated May 15, 1951. It is on here as Page 119, if that helps any.

A. What was that voucher number again, sir?

A. 29388, dated 5-15-51, Building Fund No. 3

A. Is that in the disbursement section of that?

Q. Wait a minute. Are you familiar with this summation made by the prosecution?

A. No, sir, I never saw that.

Q. Well, it is Building Fund, Series 1950, if that helps in the report. It ought to be on Page 119 of that report.

Mr. Wilkey: Your Honor, I submit, if the purpose of—

A. I have it.

Mr. Wilkey: If counsel's inquiry is to determine this particular witness' familiarity with the items that are in 9 and 10, Exhibits 9 and 10, then such inquiry is immaterial because, to my knowledge, he has never seen 9 and 10 and has no familiarity with them at all, and we make no contention he would have any familiarity with 9 and 10, if that would be the purpose of the inquiry, to test his familiarity? It is immaterial. If it is for another reason, it is irrelevant.

Mr. Foreman: That isn't the purpose at all. I make no attempt to test his familiarity.

Mr. Wilkey: I withdraw the objection.

Q. (By Mr. Foreman) Is there shown on Page 119 information alleged to have been abstracted from a check issued 5-15-51 as voucher No. 29388 to Leonardo J. Parras for drainage installation which check was cashed May 23, 1951, and in the amount of $756.50.

A. Yes, sir.

Q. And is there also on the same Page 119 an abstract showing a voucher dated 5-15-51, No. 29390, to one Juan R. Salamanca for sound absorbing ceiling, cashed May 23, 1951, for $795.80.

A. Yes, sir.

Q. Now, turning to the BISD Local Maintenance Fund, which should be in that report on Page 64. Is there a voucher dated 5-15-51, No. 29397 payable to Nita Elda Garza for clerical work, cashed 5-17-51 for $75.00?

A. Yes, sir.

Q. And on Page 67, is there a voucher dated 5-15-51, No. 29398 to Maria Elva Garcia, salary (clerical work) for $75.00?

A. That was 5-15-51, 29398, Maria Elva Garcia, salary, clerical work, $75.00.

Q. Now, please, sir, turn to Page 118 of that Exhibit to voucher 29392 payable to Arcadio F. Gutierrez for drapery, stage equipment for auditorium installation and materials, cashed May 23, 1951, for $705.95.

A. Yes, sir.

Q. And on Page 118, is there also a voucher 29391 dated May 15, 1951, payable to Isidro S. Carmona for

steel sash work for science room, doors, windows and some material for $846.75 paid on May 23, 1951?

A. Yes, sir.

Q. Is there, on the same page, voucher No. 29387, May 12, 1951, payable to Jose H. Mondragon for tile and brick contract new building, cashed May 23, 1951, for $895.00.

A. Yes, sir.

Q. By the way, Mr. O'Connor, do any of these abstracts of checks, either the ones inquired about or any of the others, show by whom such checks are purported to have been signed.

A. No, sir.

Q. That is not a concern of your office, as to who signed the checks?

A. No, sir.

Q. That is a concern of the bank depository.

A. Yes, sir.

Q. Now, as a matter of practice or custom, is there in your possession, anything other than such reports as the abstracts of checks as may be represented by Government's Exhibits 1 through 5 to show the issuance of any such vouchers? Do you have anything else other than the mere abstract contained in this report.

A. All we have is this.

Q. All you have is that.

A. Yes, sir.

Q. You are not required to receive a duplicate copy or photostat copy of any such vouchers?

A. No, sir.

Q. And that has been the—who prescribed these forms by which the 16 or 1800 school districts of Texas make their reports to the Central Education Agency.

A. They are prescribed by the Texas Education Agency, and approved by the State Auditor.

Q. Isn't it true that the Texas Education Agency is no longer in existence, that it is now the Central Education Agency.

A. Sir, it has always been, since the foundation program, commonly referred to as the Texas Education Agency, and the legal statutory name is the Central Education Agency. Prior to that time, it has been known as the State Department of Education.

Mr. Foreman: That is all from this witness, Your Honor.

Mr. O'Connor: Your Honor, I have a great deal of work with the Registrar—

The Court: Will there be re-direct examination?

Mr. Bottler: Yes, sir.

The Court: There will be re-direct examination.

1-81 RE-DIRECT EXAMINATION

Q. (By Mr. Bottler) In making your examinations of these annual reports of school funds, do you rely on statements made by the depository banks in these annual reports?

A. Yes, sir.

Q. If your examination of what was in the reports showed that the report appeared to be correct, no misapplication or misappropriation of funds, do you make any independent investigation of the voucher or check payments that appear to have been made according to the annual report.

A. No, sir.

Mr. Bottler: No further questions.

Mr. Foreman: Nothing further from the defense.

The Court: Is there any objection to excusing this witness?

Mr. Foreman: Your Honor, we needed Mr. O'Connor at the last trial of this case, and had excused him, and didn't feel like going to the expense of bringing him back. I don't wish to appear to be in the position of not accomodating a public servant, but I would like the excusing or not excusing to be done in the absence of the jury. We will do that insofar as it will not interfere with the Court on the other witnesses.

The Court: It is now twenty minutes to five, and I am going to excuse the jury until tomorrow morning, but before I excuse the jury, I have a matter I want to discuss with eveyone present.

We have a jury of twelve jurors and four alternates, making sixteen jurors altogether. We have quite a number of defendants and attorneys, and the other staff. This is a trial that may be a protracted trial. By that I mean, it will probably be longer than the average trial, and I think it is important that we efficiently utilize our time with the view of finishing it as soon as we can. I want to stress the importance of promptness, and I will say to all concerned, that I am going to adopt what you may expect to be the usual hours of work each day. There may be emergencies that may require a variance from that, but our hours of work generally will be from 9:30 A.M. until noon, with a mid-morning recess. We will have a noon recess from 12:00 o'clock until 1:45, and our

afternoon sessions will be from 1:45 until 5:00, or approximately 5:00, with a mid-afternoon recess. That is for the benefit of all present. I urge each of you to be prompt, because if one person is late, then everyone in the courtroom must wait until that person arrives. The jury is reminded of the instructions previously given, and with those instructions, the jury is excused until 9:30 tomorrow morning, and I will ask that all others remain.

(The following proceedings were held out of the presence and hearing of the jury.)

The Court: Let the record indicate that the jury has withdrawn.

Now, getting back to the question of excusing Mr. O'Connor, or others who may ask to be excused, Mr. Foreman, you asked that it be discussed out of the hearing of the jury.

Mr. Foreman: Frequently a jury is influenced with the attitude of one side or the other about excusing a man, and they may say, "He must be worried about his testimony", and overemphaisize his testimony, and if we refuse to excuse a man, I am afraid of the effect it might have on them. I was considering, before the last trial, not to excuse this man and several others, but I would like to confer before agreeing to it. I would like to do it tonight. I don't want to commit myself at this time, because there was somethnig that came up in his testimony he was to look up, and report back, and he never was here to report back.

The Court: Was there anything in his testimony that requires his coming back?

Mr. Foreman: I don't know as far as his testimony is concerned. If that were all, I would be willing to excuse him. I have no other questions to ask him, but in the event other testimony arises with reference to these specific vouchers I have asked him about, I may want to put him back on the stand.

The Court: Do you think you will want to put him on the stand tomorrow?

Mr. Foreman: No, it will be practically at the end of the prosecution's case.

The Court: Very well. Mr. O'Connor, as a public servant of some years standing, if you are excused, can we depend on you to return if you are notified you are needed?

Mr. O'Connor: I will leave Austin on a minutes' notice.

The Court: Does anyone have any objection to that?

Mr. Foreman: If it is not at our expense. If the defense doesn't have to pay for his traveling.

The Court: I am sure I don't want him to come on his own.

Mr. Foreman: We don't have the necessary funds to bring him back.

The Court: He is a Government witness. Can he be recalled at the Government's expense.

Mr. Bottler: Yes, it certainly would be cheaper for the Government than keeping him here.

The Court: Very well. With that understanding then, Mr. O'Connor, you are excused subject to recall.

Mr. Bottler: Your Honor, I would like to ask defense counsel whether they would like to examine Government's Exhibits 9 and 10 to check the accuracy.

Mr. Foreman: We didn't object as to the accuracy. Our objection was otherwise, and while I haven't checked it, I have enough confidence in the probity and integrity and assiduous devotion to duty of the prosecution to know they would not make a mistake.

The Court: I haven't checked it either, and I am not going to unless I have to. Is there anything else?

Mr. Foreman: No, Your Honor.

The Court: I want to bring up this matter: Mr. Anderson, the Clerk, advised me this morning Mr. Wilkey had asked him if we were going to work four days or five. What was the practice in the previous trial of this case.

Mr. Wilkey: Your Honor, in the previous trial, it was interrupted by some holidays, which of necessity the Court was obliged to take.

The Court: Let me give you my views about it. This will be a protracted trial, and I am sure that everyone involved wants to come to the end of it, and I am sure counsel will want to come to the end of it as soon as they can, so it is the intention of the Court to plow right along with the end view of finishing this trial. For that reason, I would suggest a five-day week with this exception, or with these exceptions: It has been the practice of this Court to conduct arraignments and sentencing on Friday. I have some cases set for sentencing and arraign-

ments next Friday; however, I can do that Friday afternoon, which means we could have a half-day on Friday, so it is my intention to proceed with this trial Tuesday, Wednesday, Thursday and a half-day Friday, which will leave Friday afternoon for other matters. I have cases set for arraignment and sentencing next Friday. I don't believe I have any for Friday the 17th, do I?

The Clerk: I don't believe so.

The Court: I will make this announcement then, that I want no cases for arraignment and sentencing on Friday of the 17th, and I will have arraignments and sentencing on—at 2:00 p. m., on Friday, May 10th, and Mr. Anderson, will you please advise Mr. Kroll arraignments and sentencing this week will be 2:00 p. m., Friday, May 10, and ask him to notify all defendants and attorneys who may be concerned, and also will you please notify the probation officer and the marshal's office. There will be arraignments and sentencing on May 17th. The next date set for arraignments and sentencing will be at 2:00 p. m., Friday, the 24th, which means that we can have five full days next week, four and one-half days the week of the 20th. Now, we can have only a three-day week the week of May 27th, because the Fifth Circuit Court Judicial Conference is called to meet in New Orleans on Thursday and Friday, May 30th and 31st, and under the rules, when the Chief Circuit Judge calls that conference, it is in order for every other Circuit Judge and every District Judge to be present, so we will have only a three-day week the week of May 27th. I wanted to make those announcements so all defendants and attorneys could make their plans accordingly.

Mr. Sharpe: If the Court please, I believe you have already covered this, but there is one date in particular I want to be certain I can rely on That is Friday, February 24th. Your Honor has already stated this—

The Court: February 24th?

Mr. Sharpe: May 24th.

Mr. Wilkey: I am satisfied there is unusual pessimism on the part of the defense counsel.

Mr. Sharpe: What I mean is Friday, May 24th.

The Court: My plans generally were that we would have no arraignments or sentencing on Friday, May 17th, but the next time would be 2:00 p. m., Friday, May 24th.

Mr. Sharpe: The reason I am interested, we have our graduation exercises in Brownsville that night, and I want to make my plans, either to be there or not.

The Court: Would anyone have any objection to the four-day week, the week of the 20th, 21st, 22nd, and 23rd.

Mr. Sharpe: No, Your Honor.

Mr. Foreman: The only date I am concerned about is my birthday, June 21st.

The Court: We have observed your wedding too. I don't know whether the Court can take any notice of your birthday or not, Mr Foreman.

Very well, we will plan for a four and one-half day week this week, a five-day week the week of the 13th, and a four-day week the week of the 20th, and a three-

day week the week of the 27th, and beyond that no plans are made, no definite plans. Anything further, gentlemen?

Mr. Wilkey: Not from the Government.

Mr. Foreman: Nothing from the defense, Your Honor.

The Court: Very well. Court is adjourned until 9:30 tomorrow morning.

1-89 MORNING SESSION—MAY 7th, 1957

The Court: Be seated, please.

I am advised, and I observed that there is one juror absent.

I have an announcement that I want to make, a general announcement I want to make to all of the witnesses, so will you bring all of the witnesses into the courtroom, please?

Mr. Foreman: While we are doing that, may the record show commencing today, Mr. Luther T. Jones of Corpus Christi has arrived as counsel for the defendant Texas State Bank of Alice, please.

(Juror entered the courtroom and resumed his seat in the Jury Box.)

The Court: Mr. Ellis, you are late this morning by three or four minutes, and that is the subject of which I spoke yesterday, and when there is tardiness; when one man is absent, it means everyone must stand by and wait, and I want to eliminate tardiness. 9:30 is not an unreasonable hour, and if it becomes necessary to enforce discipline, the Court will do it. You may be seated.

Are all of the witnesses in the courtroom now?

The Clerk: Yes, Your Honor.

The Court: I want to make an announcement, which I hope will improve our procedure. I want to make this announcement to all witnesses. There are quite a number of witnesses, and I want to talk to you all at the same time. You are called as witnesses because it is assumed you have something to testify. One of the difficulties we have with witnesses is that they are modest, and I understand that most of you are not accustomed to appearing in court, and they speak in subdued tones, so we cannot hear them. Usually you have to prompt witnesses to speak louder so everyone in the jury box and everyone in the courtroom can hear, and then another difficulty we have is sometimes during your testimony, one of the attorneys will walk up to the witness stand and stand at your side. When the attorney is standing at your side, most of the witnesses get the feeling it is a private conversation with the attorney, and they lower their voices almost to a whisper, but it is not a private conversation. You will carry on no private conversations in the courtroom. Even though the attorney is standing at your side, it is important for everyone in the courtroom to hear, so I will tell you now, when you are called to testify, we want you to speak out clearly and distinctly so everyone in the courtroom can hear you.

I don't think it will be necessary to translate that through the Spanish interpreter. They will speak through the Spanish interpreter who speaks out clearly, so when you are called to testify, we want you to speak out clearly in a voice that can be heard all through the courtroom. Thank you, ladies and gentlemen.

Now, I have another announcement to make of a general nature. I probably should have made this announcement in the presence of the witnesses, but they can be advised by counsel. This, as I announced yesterday, will be a protracted trial, which will last longer than the ordinary trial. So that all of you may make plans, I am going to plan as well as we can he days tht we will work in the trial of this case. This week, we will work four and one-half days, Monday, Tuesday, Wednesday, Thursday, and Friday morning. The Court has other matters set for Friday afternoon. The next week, the week of Monday, May 13th, we plan to work five full days, Monday through Friday. The following week, the week of Monday, May 20th, we will work four full days, Monday through Thursday. We have other things planned for Friday, and on Monday, the week of April 27th, we will work — the week of Monday, April 27th, we will work three full days, Monday, Tuesday, and Wednesday. If required to go beyond that time, announcements will be made in the future.

Mr. Foreman: Just for the record, Your Honor inadvertently said April, meaning May, of course.

The Court: Yes, excuse me. I am speaking of the week of May 6, that is this week, we work four and one-half days to and including Friday morning. The week of May 13th, five full days, and the week of May 20th, four full days, and the week of May 27th, three full days.

Very well. The Government may call its next witness.

Mr. Bottler: Your Honor, the Government requests permission to read into the record stipulations heretofore entered and filed in the records of this case.

The Court: Is there any objection?

Mr. Foreman: No, Your Honor.

The Court: Very well.

Mr. Bottler: "The Government and all defendants stipulate and agree as follows: (1) The Benavides Independent School District is located in Duval County, Texas and is, and has been since March 23, 1915, a duly authorized and existing independent school district under the laws of the State of Texas.

(2) The school records of the Texas State College for Women show the attendance of Maria Elva Garcia, daughter of Santiago Garcia from Benavides, Texas at said college at Denton, Texas, from September, 1949 through July, 1950 and from September, 1950 through May, 1951.

(3) The school records of the Breckenridge Hospital School of Nursing show the attendance of Maria Elva Garcia, daughter of Santiago Garcia, from Benavides, Texas at said school in Austin, Texas, from September, 1951 through May, 1954.

(4) The school records of the Incarnate Word College show that Nita Elda Garza, daughter of Jesus G. Garza from Benavides, Texas, attended said college in San Antonio from February, 1950 through May, 1950, and from September, 1950 through May, 1951.

(5) The school records of the Breckenridge School of Nursing show that Nita Elda Garza, daughter of Jesus G. Garza from Benavides, Texas, atended said school at Austin, Texas from September, 1951 through August, 1954."

1-94 TROY CAREY

a witness called in behalf of the Government herein, having been first duly sworn on oath, testified as follows, to-wit:

1-94 DIRECT EXAMINATION

Q. (By Mr. Bottler) What is your name, sir?

A. Troy Carey.

Q. And where do you live?

A. Freer, Texas.

Q. How long have you lived at Freer, Texas?

A. Thirteen years.

Q. Do you hold any official position with the Benavides Independent School District?

A. At present, no.

Q. Have you ever held such a position?

A. Yes, sir.

Q. What position did you hold?

A. Secretary of the Board.

Q. Were you a member of the Board of Trustees?

A. Yes, sir.

Q. When did you go on the Board of Trustees of the Benavides Independent School District?

A. January, 1953.

Q. Whom did you replace?

A. Mr. Earl DeLaney.

Q. Where were monthly meetings of the Trustees held.

A. There were three members in Freer, and we held our meetings in the high school building in Freer, Texas.

Q. And who would attend those meetings?

A. Mr. Earl DeLaney, Mr. W. C. Kelly and myself, and our superintendent, of course.

Q. Were there other members of the Board of Trustees who did not live in Freer?

A. Yes, sir.

Q. How many members did not live in Freer.

A. Four.

Q. How often did you atend a meeting of the entire Board of seven trustees in the period from January, 1953 to February, 1954.

A. Not any.

Q. All right. Now, what did you do at your monthly meeting of the three trustees of Freer?

A. We met wih our school superintendent and went over all the bills, or the school problems he might have, authorized the payment of such bills, and routine school business.

Q. What kind of records were kept of the bills, invoices, and checks.

A. Well, Mr. Reed, our superintendent, kept a voucher number of each check, recorded who it was for, and what it was for.

Q. Now, I wasn't too clear. Who was the member of the board from Freer in, say June of 1953?

A. Well, that would be Mr. W. C. Kelly, Mr. Paul Green, and myself.

Q. Was that the same three who comprised the Freer group of the Board during the period of time between January of 1953 and February, 1954?

A. Yes, sir.

Q. Now, those bills that you went over at the Freer school, did they pertain to the bills for Benavides and Freer, for Benavides, or for Freer, or what?

A. For Freer alone.

Q. Did you ever check any of the bills rendered for services or materials to the Benavides schools?

A. No.

Q. Now, did you ever vote to employ O. P. Carrillo as attorney for the School Board.

A. No, sir.

Q. Did you ever vote, as a trustee of the Benavides Independent School District, to furnish any office furniture or equipment to O. P. Carrillo?

A. No.

Q. Did you ever vote, as trustee of the Benavides Independent School District, to furnish materials and supplies to refurbish and condition the office of O. P. Carrillo, an attorney in San Diego?

A. No, sir.

Q. Did you ever authorize Oscar Carrillo to purchase gasoline, put it in his private or ranch vehicles, and charge it to the Benavides Independent School District?

A. No, sir.

Q. Did anyone else so vote on those matters that I have discussed?

A. Not to my knowledge, no, sir.

Q. Not to your knowledge. When did you find out that O. P. Carrillo was acting as attorney for the Benavides Independent School District?

A. It was in, I believe, around February of 1954.

Q. Did you ever examine the annual report of school funds for the fiscal year ending August 31, 1953?

A. No, sir.

Q. Now, do you know what action the board members at Benavides took in the period from January, 1953 to February, 1954?

A. No, sir.

Q. Now, were you —

Mr. Foreman: What was that question? I got the answer.

Mr. Bottler: Do you know what action the Benavides members of the board took from January, 1953 to February, 1954?

Now, how long after February, 1954 were you on the Board?

A. Until this past April 1st.

Q. Did you ever meet with all seven members of the Board of Trustees after February, 1954?

A. Oh yes, each month.

Q. After February, 1954, did you ever have meetings of only the Freer trustees.

A. Oh, yes, we have our meeting like we have always had. I think it is a good school policy, with two schools like we have in our District, that we meet once a month, and we also have a regular meeting with the seven board members in Benavides.

Mr. Bottler: No further questions.

1-99 CROSS - EXAMINATION

Q. (By Mr. Foreman) You are no longer a trustee.

A. That is right.

Q. And you were not a trustee until January of 1953?

A. Right.

Q. And you served until last — this last month.

A. That is right.

Q. And did you not run for re-election.

A. Right.

Q. What is your occupation?

A. Wholesale gasoline agent, Magnolia Petroleum Company.

Q. How long have you lived in Freer.

A. Thirteen years.

Q. It has been established that the Benavides Independent School District was organized in 1915. How old were you then?

A. Really, I didn't know when.

Q. Sir?

A. I didn't know when the school district was established?

Q. What is your age?

A. Forty-seven.

Q. Mr. Carey, tell us how large the Benavides Independent School District is in square miles.

A. Our population?

Q. Both, and a general description of its territory.

A. Well, that I couldn't do.

Q. Well, is it a small or a large area?

A. I would say it was a rather small area.

Q. How large is the town of Freer?

A. Population of around 2,500.

Q. How large is the town of Benavides?

A. I would say it was probably 2,000, 2,500, approximately.

Q. Are there other towns in the school district besides Benavides and Freer?

A. No.

Q. What is the nature of the genealogical descent of the people of the two towns as to being Anglos or Latins?

A. In Freer, we have approximately ten percent Latin American, and in Benavides it is probably, just off hand, I would say ten percent Anglo.

Q. Then they have about the same number of persons of what we call Anglos in the Southwest, that is, descent other than Latin Americans, in Benavides as you have of Latin Americans in Freer.

A. That is right.

Q. Ninety percent Anglos in Freer, ninety percent Latin Americans in Benavides?

A. That would be pretty well true.

Q. Are or not the Board of Trustees representing the town of Freer of Anglo descent?

A. That is right.

Q. And that has been historically the policy throughout the existence of the City of Freer, so far as you know?

A. The thirteen years I have been there, it has been that way.

Q. And is or not the genealogical descent of the trustees of the town of Benavides Latin, and has it or not been true for the thirteen years you have been there.

A. Right.

Q. Do you recall when the — state whether or not it was the custom prior to your coming there, and continually after you went on the Board, prior to your coming on the Board as a member.

A. If I understand it right, the way that we generally run both schools?

Q. Yes, tell us in your own words.

A. Well, actually the three members at Freer, with the school that we have, we run our school. The ones before this run our school, and Benavides run their school, and up until

February, 1954, it was actually the same as two schools, as far as we were concerned. Since that time, we have met together and have run the schools as one Board.

Q. In othe. words, although legally it is one school district, you all functioned internally, so far as the administration of the Freer school and the Benavides school, as though they were two separate school districts?

A. That is right.

Q. You hired, you selected and hired, your principal and your teachers, made the determination of your policy, of your courses, textbooks, athletic equipment, and improvements, buildings, etc. just as though there were no Benavides members, did you not?

A. That is right.

Q. And did or not the four members of Benavides likewise perform the same functions for the Benavides school.

A. Yes, sir.

Q. Do you know how long that practice had continued prior to your coming on the Board in January of 1953?

A. Well, the two members I have served on the Board with said that had been the general policy all the time they were on the Board, which was a number of years. I think Mr. Green was on there about eighteen years, and Mr. Kelly ten or twelve. That had been the policy of running the schools, and it continued that way up until February, 1954.

Q. Insofar as such business as the Benavides Independent School District had with the outside world, or rather, the reports to Austin and the bank and the actual awarding, voting on the awarding of contracts after you all had selected them, which of the two school boards, that is to say Freer being the Freer and Benavides being the Benavides, handled the relationship of the Benavides Independent School District without outside agencies?

A. Benavides.

Q. That would be the four members at Benavides.

A. Right.

Q. The law provided for seven members of the Board of Trustees, did it not?

A. Yes.

Q. Otherwise, you might have functioned each with three, if there were six, or an even number, it would have been done that way.

A. Right.

Q. Do you know, out of your own knowledge, when the policy of practice of the City of Benavides of handling its affairs with the outside world commenced? Do you know, of your own knowledge, whether it commenced in 1915 when the Board was formed, or not.

A. No, I have no idea when it started.

Q. Then, insofar as the engaging or employing of attorneys to represent the school district or entering into any contracts with them, that would not have been, as a matter of practice or custom, something for any member of the Freer division to have set up as a matter of custom or practice, would it?

Mr. Bottler: I object, unless he knows the custom or practice. I don't think the question calls for custom and practice with relation to an attorney hired by the Board.

The Court: Well, it is cross-examination, and I am going to be liberal, however, the witness is instructed that he will not answer it unless he does know.

Q. (By Mr. Foreman) Assuming that it had been done during the time you were on the board, an attorney was

engaged to collect, say, delinquent taxes, would that have been something to have been decided by the Benavides Independent School District end of the board, the four members of Benavides, or something to have been passed on as a matter of practice and custom by the Freer group from January, 1953 until February, 1954?

A. I think that was the general practice, yes, sir.

Q. It would have been something for the Benavides people to have decided, entered into a contract, and signed.

A. I think they would have done that, yes, sir.

Q. Do you know whether or not, in 1952, such a contract for collection of delinquent taxes was entered into by the Benavides Independent School District, between the members of Benavides and O. P. Carrillo, and filed with the County Clerk of Duval County? Do you know whether that was done or not? You don't know?

A. That is right.

Q. It could have been done, so far as you know.

A. It could have, yes, sir.

Q. Now, Mr. Carey, if O. P. Carrillo started as attorney for the Benavides Independent School District in the year 1952, there would have been no occasion for you, even if you had been on the Benavides end of the Board, to vote on such contract, or have any knowledge if the terms of the contract?

A. I don't understand your question.

Q. I say, if O. P. Carillo, as attorney for the Benavides Independent School District, had been employed in 1952, approximately six or eight months before you went on the Board, you could have had no reason to have voted on any such contract, would you?

A. No, sir.

Q. And did you or not, customarily, or did any of the firm members undertake to examine or approve the Minutes of the Meetings of the Benavides members of the Board.

A. No.

Q. Did or not the members of the Benavides end of the Board undertake to examine, read or approve the minutes of the Freer end of the board?

A. No, sir.

Q. Then you do not know what the minutes of the Benavides Independent School District may have shown with reference to the agreement, if any, or of the — between O. P. Carrillo, as attorney, and the Benavides Independent School District, would you?

A. No, sir.

Q. Now, tell the board — I mean tell the jury, how — whether or not — how often did the board members meet during the years between January, 1953, when you went on the board, and February, 1954 when the new policy was adopted of meeting occasionally or regularly with the Benavides members? How often in the year 1953, if at all, did you as a member of the Benavides Independent School District Board of Trustees meet with the four members who comprised the Benavides end of the District?

A. We didn't meet with them.

Q. At any time?

A. That is right.

Q. Now also, if you recall, the first time you ever did, after going on the board in January, 1953, meet with the entire seven members, that is, when I say you I mean the Freer members, with the Benavides members as one unit.

A. If I remember correctly, Mr. Foreman, that would be February, 1954.

Q. Now, after February, 1954, how long was it before you all again met with the Benavides members.

A. We meet the second Monday of each month since then.

Q. Since February, 1954.

A. Right.

Q. Now, do you alternate that meeting.

A. We do, yes.

Q. One month at Freer, and the next month —

A. At Benavides.

Q. In between those monthly meetings you now have on the second Monday of each month, how often does the Freer Board meet? Does it have regular meetings?

A. We haven't a set date for it, but ordinarily once a month we get together with our superintendent, and talk over our school problems, etc.

Q. You all have continued functioning, insofar as your own school is concerned, making your own decisions just as you did before, except that now you do have a monthly meeting with the Benavides members.

A. That is right.

Q. Do the Benavides members now undertake to control or express opinions, or vote upon the policies of the Freer school insofar as its internal management is concerned?

A. No, sir.

Q. And do you now, as a board—no, you are not a board—up to April 1st this year, did you as part of the Freer membership of the Benavides Independent School District, undertake to express opinions on any motions, questions, or recommendations concerning, as regarding the administration of the policies of the Benavides school?

A. I will tell you better if you will let me tell you in

my own words. At the meeting we have now, there are seven of us around the table, and we take part in all conversations and discussions. Any school business now is discussed by the seven members, as one school. We have our meeting or what we might call a get-together with a cup of coffee once in a while with our superintendent to see how he could be helped in our personal school problems. When we go to Benavides, we know the problems we need to bring up and have studied them, and it works very nicely that way.

Q. I understand. Assuming you want a machine to roll the tennis court at Benavides, do you all undertake to decide who should or should not have that, or do you leave that to Benavides?

A. That would be left to Benavides?

Q. Assuming they want to hire an assistant football coach?

A. That is right.

Q. That would be left to Benavides?

A. Yes.

Q. And any other personal affairs or internal affairs would be left solely to them?

A. That is right.

Q. How did you, until you left the board in April of this year, 1955, apportion the funds available for the administration of the two schools? Were they more or less equally apportioned?

A. Yes, they were.

Q. After apportioning them, how they would be disbursed was left up to the respective judgment of the members of the two towns?

A. Not altogether, per se. There were many things. Now, if they have got the money to spend, we want to

know how it is spent, what it is spent for, and we want a record to substantiate a bill, and they want that from us. We have got a roundtable meeting, and it is actually run as one school. Being four members there, when they are agreeable to one subject, there is nothing we can do about it even if we wanted to, but as a rule, any time we get together and find something good for our school, they have helped us, and if they have a problem and feel it is good for their school, we help them on it.

Q. Who served with you as members of the Benavides Independent School District—who were the Benavides members of the BISD who managed the affairs of the district with the outside world and the—affairs of the BISD from January, 1953 to February, 1954?

A. That I don't know.

Q. You do not know who? You didn't even know the name of the persons of the Benavides members?

A. That is right, I didn't from the time I went on the board until it was reorganized in 1954.

Q. Who is Mr. Earl DeLaney?

A. He is an oil man, or owns oil property there in our community. He is presently president of the First State Bank of San Diego. He moved to Alice approximately two or three years ago.

Q. And it was when he moved to Alice that you accepted an election to the Board of Trustees?

A. No, it was a while before that, Mr. Foreman. His business had accumulated until he got to where he was so busy, he couldn't give the time to the school he felt like he should, and he asked to resign.

Q. Was he on the Benavides Board of Trustees in the—Board of Trustees for the Freer end of the school in 1952?

A. Yes, sir.

Q. Do you know what date in January, 1953, you became a member of the Benavides Independent School District Board of Trustees?

A. No, sir, I sure don't.

Q. You don't know whether it was the 1st, 2nd, or 3rd?

A. No, I don't.

Q. Was that by election of the board or was it by election of the taxpayers, or citizens of the district?

A. No, it was the board.

Q. Do you know how, whether or not you were selected by the other two members, Mr. Kelly and Mr. Green, and they recommended you, and it was automatic?

A. Right. To finish out the unexpired term of Mr. DeLaney.

Q. I see. And you did not talk to, or appear before, or consult with anyone else at the Benavides end with reference to your election?

A. No, sir.

Mr. Foreman: That is all. Thank you, Mr. Carey.

1-113 REDIRECT EXAMINATION

Q. (By Mr. Bottler) When did the practice of having a record to substantiate each bill from Benavides start?

A. February, 1954.

Q. Before that time, did you ever—did you have a practice of having a record to substantiate the bills from the Benavides school, as you did the Freer school?

A. No, I knew nothing about the Benavides school.

Q. All right. Now, since 1954, what examination or check has been made of the annual reports of school funds?

A. Well, in February of 1954, we engaged an auditing firm to audit all books.

Q. Have you ever gone back to the custom of the Benavides members of the board handling the external affairs of the board, or does the whole board handle the external affairs?

A. The whole board handles the entire District School business.

Q. Does the whole board or the Benavides board handle the relationship with the tax assessor-collector?

A. The whole board.

Q. Who handled that relationship prior to February, 1954?

A. I don't know.

Q. Was it the Freer trustees?

A. No.

Mr. Bottler: No further questions.

1-114 RECROSS EXAMINATION

Q. (By Mr. Foreman) With reference to the auditing of the books, I believe you stated it commenced in 1954 in February?

A. Well, it was shortly after that. That was when we reorganized the board, and we voted to engage a reliable firm of auditors to audit the books.

Q. What auditing firm did you engage?

A. Slavick & Ponder.

Q. Both certified public accountants, a wide reputation in South Texas?

A. Yes.

Q. That is Mr. Ed Ponder, and do you know Mr. Slavick's first name?

A. I have forgotten.

Q. Mr. Carey, has any audit ever been made of the books of the Benavides Independent School District for the period of time from 1949 to February 1954?

A. I don't know.

Q. Do you know of any, have you ever seen any?

A. No.

Q. Do you know of any shortage ever been established by such audit, if any such report be made to you, to show any shortage of any funds of the Benavides Independent School District for any of the years from 1949 through 1953?

A. No.

Q. Has any suit been filed by the Benavides Independent School District against its depository bank, The Texas State Bank of Alice, for any alleged shortages of funds by you or the new board?

A. No, sir.

Q. Has any suit or claim been filed for an alleged shortage against any one of these defendants, either Mr. Jesus Oliveira, Mr. D. C. Chapa, Mr. Octavio Saenz, Mr. George B. Parr, Mr. Santiago Garcia, Mr. B. F. (Tom) Donald, Jr., or Mr. Santiago Garcia, or Mr. Oscar Carrillo, or Mr. O. P. Carrillo? Has any such suit or claim been filed or made?

A. No, sir.

Mr. Foreman: That is all.

1-115 REDIRECT EXAMINATION

Q. (By Mr. Bottler) What did the audit show, which was made by Slavick & Ponder, of the Benavides Independent School District for the fall of 1953?

Mr. Foreman: May it please the Court, the audit would be the best evidence, and we welcome Mr. Ponder as a witness in this case.

The Court: Yes, I think it calls for a conclusion, doesn't it?

Mr. Foreman: Yes, Your Honor.

Mr. Bottler: Your Honor, he just went into it. He asked about the audits, what they would show, and I was proceeding with what he had started out with.

Mr. Foreman: It calls for hearsay, calls for a conclusion, and the best evidence would be the audit and the auditor.

The Court: I think since the objection is made, any testimony of this witness of what does it show would be a conclusion, and I will sustain the objection.

Q. (By Mr. Bottler) Now, was any audit made of the books and records of the BISD for any of the years from 1949 to 1953, to August 1953?

A. I don't know.

Q. Do you know where the original books and records of the BISD are, including checks and vouchers for the period 1949 to 1953?

A. No, sir.

Mr. Bottler: That is all.

Mr. Foreman: No other questions.

The Court: Very well. You may step down.

The Witness: Your Honor, will I be allowed to go home?

The Court: Is there objection?

Mr. Bottler: No objection from the Government.

Mr. Foreman: We do not, but we again ask all witnesses be advised before they leave here not to ask that question in front of the jury.

Mr. Carey: I am sorry.

Mr. Foreman: We are not criticizing you. It is a matter of someone down the line we might not want to excuse.

The Court: Do you want all witnesses brought in and instructed not to ask that question in front of the jury?

Mr. Carey: I am sorry, Percy. You all can advise me.

Mr. Foreman: We are going to excuse him.

The Court: Is he to be excused, subject to recall?

Mr. Foreman: He may be excused.

The Court: Is there a pronouncement from the Government?

Mr. Bottler: Subject to recall from the Government.

Mr. Foreman: You will come back at your own expense?

Mr. Carey: Yes.

The Court: Very well. The witness is excused subject to recall.

Mr. Bottler: Government's Exhibit 9 shows on the first page "Annual Report of School Funds of Benavides Independent School District for Scholastic Year Ending August 31, 1950. Benavides Independent School District Building Fund," showing a page, date of voucher, number of voucher, from whom received and to whom paid, for what paid, the date paid, and the amount, showing voucher Page 126, November 5, 1949—

Mr. Foreman: Pardon me, Mr. Bottler. May it please the Court, the jury has no way of knowing, up to this point, as to whether or not this is an official record, or an expert, or a digest prepared by the prosecuting attorney. I wish they might be advised—

The Court: Are you referring to Exhibits 9 and 10?

Mr. Foreman: Yes.

The Court: I will instruct the jury Exhibits 9 and 10 are summaries prepared by the prosecution from the information and data contained in Exhibits 1 through 8. Is that not correct?

Mr. Bottler: 1, 2, 4 and 5, Your Honor.

The Court: They are summaries prepared by the prosecution from information and data contained in Exhibits—again the numbers?

Mr. Bottler: 1, 2, 4 and 5.

The Court: 1, 2, 4 and 5. Is that satisfactory, Mr. Foreman?

Mr. Foreman: Yes, Your Honor.

Mr. Bottler: Voucher No. 26339, Julian L. Anderete, for brickwork construction, date paid November 22, 1949, amount $757.45.

Mr. Foreman: The amount was what, please, sir?

Mr. Bottler: $757.45.

Mr. Foreman: Thank you, sir.

Mr. Bottler: Second, Page 126, date of voucher November 5, 1949, number of voucher 26340, to whom paid

Antonio L. Mendoza, plastering construction and millwork, date paid November 22, 1949, $563.50.

Page 126, date of voucher November 7, 1949, number of voucher 26341, A. G. Rodarte, tile floor construction and restrooms, date paid November 22, 1949, $622.65.

Page 126, date of voucher 11-8-49, number of voucher 26342, Manuel M. Corona, sidewalk construction school to library, date paid November 22, 1949, amount $883.80.

November 9, 1949, number of voucher 26343, to G. R. Roldan, truck hire and building materials, paid November 22, 1949, $472.60.

Page 126, date of voucher November 7, 1949, number of voucher 26417, to B. Gonzales, Jr., for millwork contract, date paid November 25, 1949, amount $575.80.

Page 126, date of voucher 11-8-49, number 26419, to Lorenzo G. Elizando, roofing contract, date paid November 25, 1949, $758.50.

Page 127, voucher dated December 20, 1949, number 26650, to Jesus L. Altamirano, for tractor and truck hire excavation, paid on December 23, 1949, $342.85.

Page 127, date of voucher December 17, 1949, number 26646, to Julian G. Roldan, sidewalks contract and truck hire, date paid December 23, 1949, amount $475.75.

Page 127, December 17, 1949, voucher 26647, to Ramon S. Fernandez, roofing contract, December 23, 1949, $582.85.

Page 127, voucher dated December 19, 1949, voucher number 26648, to Antonio L. Jimenez, bricklaying contract, date paid December 23, 1949, for $626.75.

Page 127, December 19, 1949, voucher number 26649, to Jose F. Cordente, for plumbing installation, date paid December 23, 1949, in the amount of $471.80.

Page 127, dated February 1, 1950, voucher number 26890, to Julian H. Moncada for plastering contract, paid February 6, 1950, in the amount of $356.47.

Page 127, date of voucher February 1, 1950, number of voucher 26891, to Antonio L. Bustamante, for truck hire, date paid February 6, 1950, amount $675.20.

Number 127, date of voucher February 2, 1950, number of voucher 26892, to R. D. Montemayor, sidewalks contract and sewage contract, paid February 6, 1950, in the amount of $877.53.

I will not read the rest of the checks appearing on Government's Exhibit 9, but will hand them to you so you can look at them as well as the annual reports that have been handed to you.

Mr. Wilkey: I know you are hoarse. Would you like me to read 10 and save your voice?

Mr. Bottler: Thank you.

Mr. Wilkey: Gentlemen, this is Exhibit 10, the Benavides Independent School District Local Maintenance Fund. As you see by Exhibit 9, they are arranged in columns, page, date of voucher, number of voucher, from whom received and to whom paid, for what paid, date paid, and amount. I will read those across.

Page 31, 8-31-49, 25905, Maria Elva Garcia, salary, 9-22-49, $75.00.

Page 37, 10-12-49, 26120, Maria Elba Garcia, clerical salary, 10-15-49, $75.00.

Page 38, 9-30-49, 26074, Jesus Oliveira, salary, 10-25-49, $100.00.

Page 38, 10-28-49, 26216, B. G. Moffett, legal service, 10-29-49, $500.00.

Page 42, 10-31-49, 26244, Jesus Oliveira, salary, 11-12-49, $100.00.

Page 48, 12-12-49, 26486, Maria Elba Garcia, salary, 12-17-49, $75.00.

53, 12-20-49, 26633, Jesus Oliveira, salary, 1-7-50, $100.00.

57, 1-26-50, 26856, Jesus Oliveira, salary, 2-7-50, $100.00.

58, 2-7-50, 26903, Maria Elva Garcia, clerical service, $500.00.

58, 2-7-50, 26903, Maria Elva Garcia, clerical services, 2-10-50, $75.00.

65, 3-13-50, 27091, Maria Elva Garcia, traveling expense, 3-20-50, $75.00.

70, 3-28-50, 27262, Jesus Oliveira, salary, 4-6-50, $100.00.

71, 4-8-50, 27301, Maria Elba Garcia, salary-clerical, 4-13-50, $75.00.

71, 4-8-50, 27300, Nita Elda Garza, salary, 4-15-50, $75.00.

79, 4-26-50, 27455, Jesus Oliveira, salary, 6-1-50, $100.00.

81, 5-25-50, 27672, Jesus Oliveira, salary, 6-19-50, $100.00.

84, 5-9-50, 27515, Nita Elda Garza, clerical work, 6-19-50, $75.00.

84, 6-3-50, 27711, Nita Elda Garza, clerical work, 6-20-50, $75.00.

86, 6-30-50, 29310, Jesus Oliveira, salary, 7-11-50, $100.00.

87, 7-18-50, 27782, Nita Elda Garza, clerical work, 7-21-50, $75.00.

88, 7-18-50, 27783, Maria Elva Garcia, clerical work, 7-25-50, $75.00.

89, 7-31-50, 27853, Jesus Oliveira, salary, 8-2-50, $100.00.

Building Fund, Page 126, 11-5-49, 26339, Julian L. Aderete, brickwork construction, 11-22-49, $757.45.

Your Honor, with the Court's permission, I will not read the rest of Exhibit 10.

The Court: Very well. I think this would be a good time to take our midmorning recess. Yes, sir?

Mr. Sharpe: If Your Honor please, the defendants at this time would like to carry forward the objections made yesterday to Exhibits 1 through 5 insofar as they are applicable to Exhibits 9 and 10, which have just been read to the jury for the first time, at least portions of them have just been read. Both objections are as to any dates read to the jury prior to September 1, 1951, that such evidence is not admissible for all purposes, and is not admissible as to all defendants, and that the Government, in connection with the use of these two exhibits should be called upon to specify the limited purposes for which they are offered.

The Court: Objection overruled.

Mr. Sharpe: Subsequent to that objection, we request the Court to limit the purpose of these documents for two reasons: One, to the existence of the scheme and artifice to defraud, secondly, to the existence of a conspiracy as set out in the 20th count of the indictment.

The Court: What else do we have charged except the scheme and artifice to defraud and a number of counts, and the conspiracy set out in Count 20?

Mr. Sharpe: The remaining indictment date from September 1st on down, which would be within the period of limitation. My objection is directed to these dates beyond the limitation, and that evidence is not admissible generally, but, if admissible at all, it should be limited.

The Court: Yes. Objection overruled.

Court will recess about 15 minutes.

(Short recess.)

1-125 LORENZO GARCIA,

a witness called in behalf of the Government herein, having been first duly sworn on oath, testified as follows, to-wit:

1-125 DIRECT EXAMINATION

Q. (By Mr. Bottler) What is your name, sir?
A. Lorenzo Garcia.
Q. And where do you live?
A. Benavides, Texas.
Q. How long have you lived at Benavides?

A. All my life.

Q. How old are you?

A. Forty-two years old.

Q. By whom are you employed?

A. The post office department as a postal clerk.

Q. And how long have you been so employed?

A. Nineteen years.

Q. Were all those 19 years in Benavides, or elsewhere?

A. Benavides.

Q. Now, what are your duties as a postal clerk?

A. Well, the all-around duties of the post office, sorting out mail, dispatching outgoing mail, and everything around the office.

Q. Now, at Benavides, do you deliver mail, or do the people have to come to the post office to pick up their mail?

A. They have to come into the post office to pick up their mail.

Q. Do you have post office boxes or general delivery, or what do you have in the post office of Benavides?

A. Post office boxes and general delivery.

Q. How do people pick up their mail by general delivery?

A. They call for their mail, sir.

Q. Now, in '43—how large is Benavides?

A. Around 3000 population.

Q. In your 43 years of living in Benavides, and 19 years handling mail as postal clerk, have you or not become familiar with the names of the adult population of Benavides?

A. Yes, sir.

Q. I will hand you Government's Exhibit 9, and ask you to look at it, and each page on it, and tell us

whether or not, outside the courtroom, you have inspected this exhibit?

A. Yes, sir, I have seen this exhibit before.

Q. Are any of the names which appear on this exhibit familiar or known to you?

A. No, sir.

Q. Do you know any of the people whose names appear there?

A. No, sir.

Mr. Bottler: No further questions.

1-127 CROSS EXAMINATION

Q. (By Mr. Foreman) Mr. Garcia, when were you talked to by anyone concerned with the prosecution of this case, at what time of the month, what year, and by that I mean investigators, postal inspectors, attorneys general, or Rangers, or anybody that may have first talked with you about any phase of this prosecution?

A. Well, some time ago, sir. I don't recall the exact date.

Q. Was it back in 1953 or 1954?

A. It might have been '53 or '54.

Q. Do you recall if it refreshes your memory, that it was along in the summer of 1953, about June?

A. No, sir, I don't recall. It could have been at that time.

Q. And do you recall who the party was that first talked with you?

A. No, sir.

Q. And since then, and from time to time, every few weeks or months, someone comes around and talks with you again about it?

A. Yes, sir.

Q. And who is the one who has talked with you most about it since the summer of 1953, if any one individual?

A. Not any one individual.

Q. Not any one individual?

A. Yes, sir.

Q. Hasn't Mr. Bill Main, United States Postal Inspector, talked with you many times since the summer of 1953, up to as much as a few days ago?

A. A few times.

Q. All right. And did he or not commence talking with you about it in 1953?

A. I don't recall.

Q. And who else besides Mr. Main, representing any branch of the Government, either of Texas or the United States, has talked with you, Mr. Garcia?

A. I believe some Government men, but I wouldn't know who.

Q. Did any assistant attorney general?

Mr. Bottler: Your Honor, we object to this unless he limits it to this prosecution. It would be immaterial.

Mr. Foreman: Well, I don't know how I can limit it. It is the defense theory that all the various prosecutions are interlinked, and I think we will be able to establish it, by witnesses in this case, even by Mr. Wilkey, himself, as a witness.

The Court: Very well. You may continue.

Q. (By Mr. Foreman) Now, you know whether or not any of the people who talked with you were representatives of the office of John Ben Shepperd, the Attorney General of Texas?

Mr. Wilkey: Your Honor, that has nothing to do with this prosecution. As long as Mr. Foreman was using the phrase "this prosecution," I didn't object, but I do now to any inquiry, in regard to any inquiry which state officials may have had. That has nothing to do with federal prosecution for mail fraud, and it is immaterial to this case, and we object on that ground, and if there is going to be any lengthy argument about it, we ask that the jury be withdrawn and we argue out this legal point at this time.

Mr. Foreman: I will shorten it, if Mr. Wilkey will state Mr. John Ben Shepperd's office did not exchange information, and he did not exchange information with Mr. John Ben Shepperd's office from the time this investigation started. If that be stated as a fact by Mr. Wilkey, I will withdraw my question.

Mr. Wilkey: I will be glad to state, the Federal Government has sought information on this case from every available source, including Mr. Shepperd's office, and every source to present to this Court, but that doesn't bear on my objection to the line of questioning undertaken by defense counsel.

The Court: Does defense counsel want to be heard on the subject?

Mr. Foreman: No, Your Honor, only to state, we offer it on the interest or bias of this witness, as to any undue pressure on him.

The Court: Suppose John Ben Shepperd, former Attorney General of Texas, or someone from his office talked to this man. How would it reflect bias of this witness?

Mr. Foreman: It would show continual working on the witness to obtain certain evidence, offered here, from the summer of 1953, we think, until up to now.

The Court: Well, now, the testimony of this witness has been rather limited. He examined a list of names, and stated that he did not know any of them as patrons of the postoffice in Benavides.

Mr. Foreman: Let me see the list please. What list was given him?

Mr. Wilkey: Nine and 10.

The Court: Do you want to show, by his answer, his statement they were not patrons of the post office was based on bias, and do you want to cross examine to some of them?

Mr. Foreman: No, I want the jury to get the entire picture of this prosecution from the time of its inception in 1953.

The Court: I don't think the testimony of this witness covers the entire prosecution.

Mr. Foreman: I was making him my own witness to that extent.

The Court: Sir?

Mr. Foreman: I was making him my own witness to the time of the inception or interrogation or interviews by the assistant attorneys general.

Mr. Wilkey: In that case, he may call him as his own witness at a later time of the case. That was my objection. The line of inquiry was not relevant to this witness' testi-

mony. If he wants to make that kind of case, he can make it later as his own witness.

The Court: Objection sustained.

Q. (By Mr. Foreman) Mr. Garcia, you state you have examined the names of Exhibit 9, and know none of them as patrons of Benavides, the Benavides post office?

A. No, sir.

Q. Do you know M. E. Garcia, as a patron of the Benavides post office?

A. No, sir.

Q. Do you know Maria Elva Garcia?

A. Yes, sir.

Q. What you mean is, do you see the name of Maria Elva Garcia here on Page—M. E. Garcia, rather, on Page 7 of Government's Exhibit 9? M. E. Garcia, traveling expenses, 5-16-52, $125.00?

A. Yes.

Q. How many M. E. Garcias do you know in Benavides who get their mail at the Benavides post office?

A. I know Maria Estella Garcia.

Q. That is another one. Is she a customer at the post office?

A. By the name of Maria Estella, yes, sir.

Q. You do not know a Matilda Garcia?

A. No.

Q. You say there is not one in Benavides?

A. Yes, sir.

Q. You say there is not one there?

A. Yes, sir.

Q. How many other cities are there in the, we will say, the 79th—by the way, what was your father's name?

A. Sir?

Q. Was your father an M. Garcia?

A. Manuel Garcia.

Q. You have a brother named Manuel Garcia?

A. Manuel Garcia, Jr.

Q. What is his middle name?

A. He don't go by it.

Q. No middle name?

A. No.

Q. What other cities are in the—do you know what the 79th Judicial District is?

A. Yes, sir.

Q. The counties it comprises?

A. Yes, sir.

Q. What are those counties?

A. Let's see, it is Jim Wells, Duval, and Falfurrias, is in one—what is that?

The Court: That is Brooks County.

Q. Brooks County, what else?

A. I don't recall the other one.

Q. And each of them have several communities, do they not?

A. Yes, sir.

Q. And in addition to that, there are other towns such as Corpus Christi, Laredo, in the area, are there not?

A. Yes, sir.

Q. As a matter of fact, there are not any contractors, building men, in the City of Benavides except the Vaellos, are there?

A. Yes, sir.

Q. That is true, isn't it?

A. Yes.

Q. They are about the only contractors there?

A. Yes.

Q. And isn't it true the Vaellos were political antagonists of the "Old Party"?

A. I don't know.

Q. Isn't it true that the Vaellos were of a different group politically?

A. I don't know.

Q. You don't know?

A. No.

Q. Mr. Garcia—

A. Yes, sir.

Q. —do people from other communities do building in the City of Benavides?

A. Well, if they do, it is very seldom, sir. Once in a while.

Q. Very seldom any building is done in Benavides for the last 70 years, isn't that right?

A. Well, I don't know how long, but the last few years, very seldom.

Q. I think that is all, Mr. Garcia.

By the way, who else works in the post office there besides you?

A. There is three men, the postmaster and two more clerks.

Q. How long has the postmaster been there?

A. Two and a half years.

Q. Is he here today?

A. No, sir.

Q. When did you first learn what you would be expected to testify to here today?

A. I don't recall.

Q. Sir?

A. I don't recall.

Q. Do you know what you were going to say when you left home? Did you know what your testimony would be?

A. No, sir.

Q. Didn't have any idea?

A. Well, I had an idea, but I didn't know.

Q. And you had that idea from talking with whom?

A. Well, a federal man, I guess.

Q. You mean Mr. Main?

A. Yes, sir.

Q. And other federal men?

A. Yes, sir.

Q. Other postal inspectors, is that right?

A. No, sir.

Q. What were their jobs, if they were not postal inspector?

A. I wouldn't recall. I wouldn't know what that branch would be.

Mr. Foreman: All right. That is all, Mr. Garcia. Thank you, sir.

1-136 REDIRECT EXAMINATION

Q. (By Mr. Bottler) Have you ever known Maria Estella Garcia to go under the name M. E. Garcia?

A. No, sir.

Q. Or Maria Elva Garcia to go under the name M. E. Garcia?

A. No, sir.

Q. Do you know any of these names as people living in Benavides?

A. No, sir.

Q. From your 43 years living in Benavides, and your work at the postal office, do you feel you know the adult population of Benavides?

A. Yes.

Mr. Bottler: No further questions.

1-137 RECROSS EXAMINATION

Q. (By Mr. Foreman) Then you do know Maria Elva Garcia as well as Maria Estella Garcia?

A. Yes, sir.

Q. They are different people?

A. Yes.

Mr. Foreman: That is all.

1-137 UVALDO SERNA,

a witness called in behalf of the Government herein, having been first duly sworn on oath, tesified as follows, to-wit:

1-137 DIRECT EXAMINATION

Q. (By Mr. Bottler) What is your name?

A. Uvaldo Serna.

The Court: I didn't understand the name.

A. Uvaldo Serna.

The Court: How do you spell it?

A. S-e-r-n-a, is the last name.

The Court: And the first name?

A. U-v-a-l-d-o.

Q. (By Mr. Bottler) Where do you live, sir?

A. San Diego, Texas.

Q. How long have you lived in San Diego, Texas?

A. Since 1926. That makes 31 years, I think.

Q. What is the population of San Diego?

A. About 4500.

Q. And what is your job?

A. I am acting postmaster.

Q. And how long have you been acting postmaster?

A. From June 23, 1954.

Q. What was your occupation prior to becoming acting postmaster?

A. I was an insurance agent.

Q. And where did you sell insurance?

A. San Diego and Alice.

Q. Now, in San Diego, is the mail delivered to the houses, or do people come to the post office for it?

A. People come to the post office for it.

Q. Do you handle the mail there yourself?

A. Yes, sir.

Q. From your residence in San Diego for 31 years, your occupation as an insurance agent or salesman, and your work in the post office there, do you feel that you know the adult population of San Diego?

A. I feel like I do, sir.

Q. Are you familiar with the names of the adults there?

A. Yes, sir.

Q. Do you know all of the people in San Diego, or are you just generally familiar with the names?

A. I know practically everybody in San Diego.

Q. All right. I will hand you Government's Exhibit 9 and ask you to look at each page of it, and tell us whether or not you have examined this exhibit prior to coming into the courtroom today?

A. No, sir, I haven't. Have I examined it today?

Q. No, have you ever examined this exhibit, and inspected the names that appear thereon?

A. Yes, sir, I have.

Q. Would you check each page to make sure it is the same document you looked at before?

A. Yes, sir, I am positive I have examined this list before.

Q. Now, are any of the names which appear on there familiar to you?

A. No, sir.

Q. Do you know any of the people whose names appear there?

A. No, sir.

Q. How far is San Diego from Benavides?

A. Sixteen miles.

Q. In what county is San Diego?

A. Duval County.

Q. In what county is Benavides?

A. The same county, sir.

Mr. Bottler: No further questions.

1-140 CROSS EXAMINATION

Q. (By Mr. Foreman) Mr. Serna, you looked at the exhibit when Mr. Bottler first handed it to you, and without more than glancing at it, and certainly without looking into the inside but the first page, answered the question that you had examined the exhibit before, but not today, did you not?

A. That is right. I misunderstood the question. I understood that the question was whether I had examined this exhibit today.

Q. Yes, sir, and then when Mr. Bottler explained he did not mean today, you said yes, you had examined it before, didn't you?

A. Yes, sir, I know that I have.

Q. My question is getting at your original testimony, Mr. Serna, and you identified that exhibit of some 15 or 20 pages, and testified to having examined all of the exhibit before, before you looked at it any more than the first page, didn't you? Didn't you? Sixteen pages? After he explained, that is, Mr. Bottler explained that he did not mean had you examined it today, but had you ever examined it heretofore, without glancing at anything more, and by only glancing at the first page, you stated that you had examined the exhibit before. You told us that this morning, didn't you?

A. Yes, sir. The reason is that I could see signatures there at the bottom of the page.

Q. What page?

A. I can see quite a few pages there, sir.

Q. Mr. Serna, at the time you affirmed the 16 pages as being the exhibit you had examined before, you had not looked at anything more than Page 1, had you?

A. No, sir, I had looked at several pages before I answered that, sir.

Q. Well, after you had identified it by glancing at the first page, then Mr. Bottler asked you to examine the other pages so you could be sure, didn't he?

A. Yes, sir, he did.

Q. But you had undertaken to identify all 16 pages before Mr. Bottler asked you to examine the other 15 pages, hadn't you?

A. Well, I noticed my signature or my initials on several pages before he asked that question, sir.

Q. You had turned—you had opened the—

A. I hadn't opened it. I can see them here, sir, without opening the pages. In fact, I can see all of them without doing it.

Q. And you had looked, so as to make sure they were the identical pages you had examined, before you answered to Mr. Bottler that you had identified the exhibit, and all of the names, is that your testimony?

A. Will you ask that question again?

Q. Your testimony, Mr. Serna, is that you had examined the bottoms of several pages before you identified that instrument?

A. Yes, sir.

Q. And it was from that that you testified?

A. Yes, sir.

Q. When did you first know, Mr. Serna, what you would be called upon to testify to here this morning?

A. Oh, quite a while back. I wouldn't remember how long ago, sir.

Q. Several years ago?

A. I wouldn't say years. Months ago.

Q. Well, about how many months ago?

A. Four or five months, I guess.

Q. And who advised you as to what you would be expected to testify?

A. Let me see. I didn't know what I was going to testify about, but I always had an idea, since it was postmasters that they were getting, or people working in the post office, it would be the names of people.

Q. Pardon me. My question, please, sir, did anyone advise you what you would be expected to testify?

A. Not exactly what I would be expected to testify, no, sir.

Q. Didn't you talk with any representative of the Government four or five months ago about your testimony?

A. There was an inspector that went over and asked me if I knew quite a few people in town.

Mr. Foreman: We object to that as not responsive, and is hearsay, and not called for by the question. I asked if anyone advised him what he would be expected to testify.

The Court: We will save time, and I will instruct the witness, when a question is asked, just answer the question that is asked, and do not volunteer any information.

A. All right, sir. I was not advised as to what to testify, sir.

Q. Did you talk with a representative of the Government, about four or five months ago, about your testimony?

A. About coming up here, yes, sir.

Q. And who was that?

A. Inspector Main, sir.

Q. Were you in the post office of San Diego at any time from 1949 through 1953?

A. No, sir.

Q. As an employee?

A. No, sir.

Q. And you have only been an employee of the post office at San Diego since when?

A. June 23, 1954.

Q. Then, you say there is—you have examined this Government's Exhibit 9, so as to be prepared to testify that you did not know any of these people living in San Diego, is that right, sir?

A. That is right, sir.

Q. And that is your testimony now?

A. That is right.

Q. Whether they lived in San Diego or not, do you know any of the people, people with those names?

A. I do not.

Q. Well, do you know anybody with these names who have initials that would match the names, if the names themselves were written out?

A. There may be some instances there where a name could be matched to somebody I know.

Q. Well, now, on Page 1, at the bottom of the page, do you know a Robin Montemayor?

A. Do you have a Robin Montemayor?

Q. It has an R. Montemayor.

A. I do, but that is not the person.

Q. I didn't ask if that is the person. I asked if you knew a Robin Montemayor?

A. Yes, sir.

Q. By the way, do you have an interest in the outcome of this case?

A. None whatsoever outside of being a citizen of Duval County.

Q. Do you, as a citizen of Duval County, have an interest in having these other citizens of Duval County convicted?

A. The only interest I have is seeing justice done.

Q. And you think justice requires their conviction?

A. I really don't know, sir.

Q. You don't have a fixed opinion in that regard?

A. No, sir.

Q. Well, now, Mr. Serna, weren't you a partisan of the party opposing these people?

A. I am — I have no party affiliation, sir.

Q. There are two political parties within the Democratic Party in Duval County are there not, the Freedom Party and the Old Party?

A. I do not know whether there are two, three, or what, sir.

Q. I didn't ask you were there any more. I said there are two, aren't there?

A. I still say I don't know whether there are two or one, or more than one or more than three.

Q. Well, we will say there are three such parties?

A. I don't know, sir.

Q. Mr. Serna, isn't it true that there are tickets put out every election, city, school, district, state and county, even all the way to the United States Senate by the Old Party, by the Freedom Party and, on a local level lately, by another or the Dan Tobin Party. Isn't that true?

A. I do know there were always two, or sometimes I am confused whether two or three or what, sir.

Q. Well, then, you do know that there is a Freedom Party that is actively opposed to the Old Party, sometimes called the Parr Party, isn't there?

A. I have read it.

Q. Sir?

A. I have read and do know. Whether there is or was, I do not know.

Q. You don't know whether there still is?

A. No.

Q. You do not know whether there still was as late as 30 days ago?

A. I don't know.

Q. And isn't it true that your brother is the head of the Freedom Party?

A. That is something you may claim is so, but I am not sure who is. I don't care who is.

Q. Regardless of that, Mr. Serna, isn't Donato Serna your brother?

A. Yes, sir.

Q. Isn't Donato Serna an active partisan of the Freedom Party?

A. I'm not sure.

Q. Isn't it true that he is — was named county auditor when a Freedom Party — Old Party man was discharged?

A. Yes, sir, I know he was named county auditor.

Q. Isn't it true that every man sitting at this table belongs to the Old Party, or the Parr Party?

A. I know that they do, yes.

Q. Sir?

A. I know that they do, that they were or are in it.

Q. Isn't it true there were members of the Benavides Independent School District who did the same thing that these men did, members of the Freedom Party, that were not indicted?

A. That is something I don't keep up with.

Mr. Bottler: Your Honor, we object to this witness testifying as to indictments. He would not be the best evidence of any indictment, and I fail to see the materiality.

The Court: You mean not indicted in this case?

Mr. Foreman: Yes, Your Honor, but the —

The Court: I think the indictment would speak for itself. You can look to the indictment and see who is indicted, and all others are not indicted.

Mr. Foreman: I think the Court is right. I know he is, and I withdraw the question.

Mr. Bottler: We object to the unsworn testimony of counsel that others did the same thing these men did. As to who did what will be shown in this trial by sworn testimony, and not by testimony of counsel.

The Court: I will instruct the jury, you will not consider as evidence any question or statement made by counsel for either side. You will consider as evidence only the sworn answers of the witness.

Mr. Foreman: Shall I proceed, Your Honor?

The Court: Very well.

Q. (By Mr. Foreman) Mr. Serna, do you know a Richard Barton?

A. Yes, I do.

Q. Was or was not Richard Barton, at the time you became postmaster, or prior to your becoming postmaster, a member of the Benavides Independent School District Board of Trustees?

A. I don't know whether he was a trustee or not, sir.

Q. You do not know?

A. No, sir.

Q. Well, do you know whether or not he is a partisan of your brother's party, the Freedom Party?

A. That is still something I don't know.

Q. What did you start to say?

A. That is something I don't know. I don't know what party affiliation Richard Barton has.

Q. Now, with reference to the distance you have testi-

fied, the distance from Benavides to San Diego, tell the jury how far it is from Benavides to Freer?

A. Benavides to Freer? About 25 miles.

Q. And do you have — going from Benavides to Freer, do you have to come through San Diego?

A. No, sir.

Q. Then give us the directions of the respective towns, first as to San Diego to Benavides, is it north, south, east or west?

A. I would say Benavides — San Diego, you go south to get to Benavides, and then from Benavides to get to Freer would be northwest.

Q. And then to give us the triangle, how far from San Diego is it to Benavides — I beg your pardon, San Diego to Freer?

A. About 25 miles.

Q. Then it is in approximately a triangle, with the base of the two corners being Benavides and Freer and the apex being San Diego, isn't it?

A. That is right, sir.

Q. Do you know anything about the boundaries of the Benavides Independent School District, Mr. Serna?

A. I have a rough idea of what the boundaries are.

Q. Do you know how far the district extends west beyond Freer, or east beyond Benavides?

A. East, the Benavides Independent School District comes from Freer east, I would say, about 10 or 12 miles.

Q. Well, then, I mean how far beyond Freer, the westernmost boundary, and how far the easternmost boundary is. Does it lie generally east and west?

A. I really don't know, sir.

Q. All right. Do you know whether or not your appointment as postmaster was recommended by officers of the Freedom Party?

A. If it was, I don't know, sir.

Q. You don't know?

A. That is right.

Q. Did you talk with your brother, Donato Serna, about your possibilities and plans of being named temporary postmaster?

A. Well, yes, but that is not the Freedom Party officials. I talked to my brother as a brother.

Q. Is there any person in Duval County any more outspoken in his leadership, or in the affairs of the Freedom Party than your brother, Donato Serna?

A. You are asking me something I don't know.

Q. Can you think of one, anyone?

A. I still don't know.

Q. You don't know whether you can or not?

A. There are several. I wouldn't know who would be the most outspoken.

Q. If you were naming the three leaders of the party, could you eliminate, in good conscience, your brother Donato Serna?

A. I don't know whether I could or not.

Mr. Foreman: All right. I believe that is all from this witness.

1-152 REDIRECT EXAMINATION

Q. (By Mr. Bottler) What other post offices are there in Duval County?

A. There are three second-class post offices, and that is

Freer, Benavides, and San Diego, and there is two smaller post offices and that is one at Realitos and one at Concepcion.

Q. Where is Realitos, sir?

A. Realitos is further south, I would say about 10 or 12 miles south of Benavides on the Laredo Highway, sir.

Q. Where is Concepcion?

A. Concepcion is east of Realitos about 10 miles.

Q. Where is Seven Sisters?

A. Excuse me, I left out Seven Sisters. Seven Sisters is north of Freer about eight miles, 8 or 10 miles.

Q. You say you had left it out, what do you mean by that?

A. When you asked me the post offices in Duval County, I left out Seven Sisters.

Q. In answer to Mr. Foreman's question, you say that you had discussed these matters with a postal inspector. I will ask you, did anyone from the Federal Government ever tell you to testify to anything but the truth?

A. No, sir.

Mr. Bottler: That is all.

Mr. Foreman: No other questions, Your Honor.

The Court: You may step down.

Mr. Foreman: Maybe I had better ask him one question.

1-153 RECROSS EXAMINATION

Q. (By Mr. Foreman) Did they tell you to testify to the truth?

A. That is right.

Q. Did they tell you what the truth was?

A. No, sir.

Q. How do you know? Did your brother tell you?

A. No, sir, my brother has never told me to testify one way or the other.

Q. Did you talk to your brother about your testimony?

A. No, I haven't.

Q. You never have?

A. No.

Q. Is he here?

A. I haven't seen him here, sir.

Mr. Foreman: That is all.

1-154 RAYMOND O. SPARKMAN,

a witness called in behalf of the Government herein, having been first duly sworn on oath, testified as follows, to-wit:

1-154 DIRECT EXAMINATION

Q. (By Mr. Wilkey) Would you state your name, sir?

A. Raymond O. Sparkman.

Q. Where do you live, Mr. Sparkman?

A. Freer, Texas.

Q. How long have you lived at Freer?

A. Approximately 19½ years.

Q. In what county is Freer?

A. Duval County.

Q. What is your employment at the present time?

A. Postal clerk at Freer.

Q. How long have you been postal clerk at Freer?

A. Approximately 19½ years.

Q. As postal clerk at Freer, what do you do in the performance of your duties?

A. Sort mail, bag mail, run the general delivery, issue money orders, the postal window, general clerical work.

Q. Does sorting mail require a knowledge of the names of people getting their mail at the Freer post office?

A. Yes, sir.

Q. How long have you done that business?

A. Nineteen and a half years.

Q. How is the mail delivered in Freer?

A. Either to personal post office boxes or general delivery.

Q. Is there any house-to-house delivery?

A. No, sir.

Q. Does everyone who gets mail in Freer come to the post office to get it, either the general delivery window or the box?

A. Yes.

Q. Who gives them the mail when they come to the general delivery window?

A. The general delivery clerk gives it through the general delivery window, or through the post office box.

Q. I see. From your general duties as post office clerk, are you acquainted in the town of Freer?

A. Yes, sir.

Q. I hand you what has been identified as Government's Exhibit 9, and ask you to take a look at that, each page, and tell me if you have seen that before?

A. Yes, sir.

Q. On a previous occasion when you saw this—by the way, where was that?

A. Well, it has been here.

Q. All right. On a previous occasion when you saw that here—

Mr. Foreman: Had he finished his answer?

Mr. Wilkey: I don't know whether he did or not.

Mr. Foreman: He said, 'Well, it has been—'

Q. (By Mr. Wilkey) Continue, if you had not finished your answer.

A. Well, it has been here, and I presume that is the list I have seen several times.

Q. Who else showed you the list?

A. Post Office Inspector Main.

Q. Where was that?

A. Freer, Texas.

Q. In examination of the list, this list here that you saw here in Houston, and in examination of the list when Inspector Main showed it to you, did you read over each page carefully to examine each name on the pages?

A. I did.

Q. All right, sir. Tell the jury whether or not you know any of these people who are listed on the pages of Exhibit 9?

A. I do not.

Q. You are not acquainted with them, either through your personal acquaintance or business acquaintance in the post office at Freer?

A. No, sir.

Q. Aside from the fact that you don't know them as a name and a face, or a person, are any of the names on Exhibit 9 familiar to you either through your business work in the post office, or through any other knowledge you may have?

A. No, sir.

Mr. Wilkey: All right, sir. No further questions.

1-157 CROSS EXAMINATION

Q. (By Mr. Foreman) Mr. Sparkman, where else besides here have you seen this list of names comprising Government Exhibit 9?

A. Well, I stated, in Freer.

Q. Where else?

A. I have seen it here three or four, about three times, I believe, sir.

Q. Where else?

A. I believe that is it.

Q. Did you ever see it in New Braunfels?

A. I couldn't recall it is this exact same list or not.

Q. I don't know. Do you know whether it is or not?

A. No, sir.

Q. Then, as a matter of fact, you have been shown a great many lists, haven't you?

A. Oh, a number of names that high.

Q. And you don't—

Mr. Wilkey: He did not finish his answer.

Mr. Foreman: Did I interrupt you? I didn't intend to.

A. I have seen several lists of names of presumed people that I don't know.

Q. Then, getting back to my question, where else besides New Braunfels and here and Freer have you been shown lists by—of names in connection with contemplated testimony as to your identification thereof? Where else have you been shown such names?

A. Those are the only places, sir.

Q. And who showed them to you at New Braunfels?

A. Sidney Chandler.

Q. Did you see, at New Braunfels, post office Inspector Main?

A. Yes, sir.

Q. Did you see, at New Braunfels, the United States District Attorney, Mr. Wilkey?

A. I don't believe I did.

Q. Do you know whether he was there or not?

A. No, I don't.

Q. And when was it that you saw Mr. Main and Mr. Sidney Chandler at New Braunfels?

A. On two different occasions, sir.

Q. It was on how many different occasions?

A. Two.

Q. And what month and what year were those?

A. One of them was November of last year.

Q. 1956?

A. Yes, sir.

Q. When was the other occasion?

A. I believe it was January of this year.

Q. 1957?

A. Yes, I believe it was.

Q. And what was the occasion for your being at New Braunfels, Mr. Sparkman?

A. Well, it was a subpoena.

Q. You were there to testify, even as you have testified here today?

A. Yes, sir.

Q. As to knowledge of the identity of these individuals and companies?

A. Yes, sir.

Q. And it was at the trial when some of these defendants were on trial for conspiracy in connection with the Benavides Independent School District funds in the State Court, wasn't it?

A. Yes, sir.

Q. And you did so testify in the State Court trials at New Braunfels, didn't you?

A. Yes, sir.

Q. Did you appear, by any chance, at Tyler in November of 1955 at the trial of Mr. D. C. Chapa in connection with the Benavides Independent School District affairs in the District Court, State District Court, in Tyler, Mr. Sparkman?

A. No, sir.

Q. Did you appear—the only trial—

Mr. Wilkey: Your Honor, we object to this line of inquiry as being irrelevant, immaterial, and time wasting. If this gentleman was there, he knows very well that Mr. Sparkman wasn't there and he is merely going into many things extraneous entirely to the cross examination of this witness.

The Court: You mean if Mr. Foreman was there?

Mr. Wilkey: If he was there, he would know it.

The Court: That would not be a good basis for an objection, because an attorney may ask many questions he

knows, but he wants to put it into evidence. I will consider your objection that it is extraneous and immaterial. I will hear the Government and the defense on that.

Mr. Wilkey: It is simply extraneous, Your Honor, because while we do not object to any inquiry about a list at New Braunfels because the witness said he had been shown a list, he didn't think it was that one, there is no relevance to anything at Tyler as brought out in the witness' testimony either on cross or direct examination.

Mr. Foreman: May it please the Court, I know my esteemed adversary did not mean to misquote the witness' testimony, and I don't mean to imply such, but the jury may think that is what the witness said. The witness did not say, "I do not think it is the list shown me at New Braunfels." The witness said, "I don't know whether it was the list or not." For the additional testimony to go in there unchallenged would perhaps mislead the jury.. We offer it, Your Honor, on the witness' ability to know whether this is the list or not. If he did not or could not say whether it was the list shown at New Braunfels—

The Court: Well, I will permit the interrogation for that purpose.

Mr. Foreman: We offer it further to show the interlocking prosecution of the State and Federal charges of these defendants because it is our theory and defense, Your Honor, that the genesis of this prosecution is politics.

Mr. Wilkey: Your Honor, we ask that the jury be instructed to disregard the unsworn, unsolicited, partisan comments—

The Court: The jury has been instructed—

Mr. Wilkey: —of the attorney for the defense hired to perform his function, as we are, but at the same time he has disregarded your instructions—

The Court: The jury has been instructed, and I will instruct the jury again, that you will not consider as evidence the statements or questions asked by counsel for either side. You will consider only the sworn testimony of the witness. You may continue.

Q. (By Mr. Foreman) Mr. Sparkman, you mentioned a name a while ago, of one Sidney Chandler. Will you tell the jury who this individual Sidney Chandler is, and was, at the time he presented you a list, which you do not know whether it is this list or not?

A. The Assistant State Attorney.

Q. Was he or not an assistant attorney general under John Ben Shepperd?

A. Yes, sir.

Q. And had you or not been shown the list that he showed you in New Braunfels by him or anyone else in Freer?

A. I beg your pardon?

Q. Had you or not, previous to being shown the list in New Braunfels, been shown a list by this same, or the list you were shown in New Braunfels by Sidney Chandler or anyone else? Had you been shown that list in Freer?

A. Yes, sir.

Q. By whom?

A. Sidney Chandler.

Q. And who accompanied him?

A. Sir, I don't — there was no one with him when I saw him.

Q. Where in Freer was it shown to you, Mr. Sparkman?

A. At my home.

Q. At nighttime?

A. No, sir.

Q. Daytime?

A. Yes, sir.

Q. Sunday?

A. Saturday afternoon, sir.

Q. Thank you. Now, when was the first time? Was it a few months ago, the first time you were ever shown any list at all, Mr. Sparkman?

A. No, sir.

Q. When was the first time, with reference to the year and approximate time of that particular year, that you were first shown any list?

A. Sir, I believe it was the latter part of 1952.

Q. The latter part of 1952, and who showed you the list at that time?

A. Inspector Main and Inspector Cauley.

Q. How is Cauley spelled?

A. C-a-u-l-ey, I believe, sir.

Q. And Inspector Main is Inspector W. D. Main?

A. Yes, sir.

Q. And from time to time after the latter part of 1952, and until now, had you, on various occasions, been shown similar lists by either or booth of these, or other representatives of the prosecution?

A. Yes, sir.

Q. And would you say that that has occurred once, or twice, or more every year since the latter part of 1952?

A. Well, I would say I had seen the list, I am sure, once a year since then.

Q. And have you made any statement concerning the identification or failure to identify the names on any of these various lists, by that I mean a written statement as distinguished from a verbal statement?

A. Yes, sir.

Q. And when and where did you make such?

A. 1952.

Q. And to whom?

A. Inspector Main.

Q. I see. And have you since seen that statement in the files of the United States District Attorney here?

A. I do not believe I have.

Q. Have you been examined from that statement at any time by any of the members of the prosecution attorney's staff?

A. Yes, sir.

Q. When was that?

A. January of 1956.

Q. And where?

A. Here.

Q. Was there attached to the statement that you made in 1952, and from which you were examined in January of 1956, a list of the names and to which the statement referred?

A. Sir, I don't know whether they were attached to the list or not.

Mr. Foreman: May we ask the prosecution for that statement and that list for the purpose of examining this witness?

Mr. Wilkey: I would be very happy to furnish it to you if I had it, but I don't have that statement with

me at this time. It is somewhere in the files, and I would be very happy to produce it, but we have offered the testimony here of the witness to his best recollection. I might also add. Your Honor, while we are willing to produce it, that there is no basis in law for the request for such a production from the files of the prosecution any more than I could ask for douments from that table there, and I cite, Your Honor, the case of Gordon vs The United States, the Supreme Court of the United States.

The Court: I don't think we need to get into that yet. The testimony of this witness, on direct examination, related to the list identified as Exhibits 9 and 10, did it not?

Mr. Wilkey: Exhibit 9 only, Your Honor.

The Court: Exhibit 9 only.

Mr. Wilkey: We have not inquired about Exhibit 10, which is a list on a different subject.

The Court: What is the list inquired about now, Mr. Foreman?

Mr. Foreman: I am asking, for the purpose of cross examining the witness, for a list that he says he doesn't know whether there is such a list or not attached to his statement, but I wanted such a list to identify, to see if it was the same list, if there is, as attached to the statement.

Mr. Wilkey: In order to clarify matters, I have no recollection of examining this witness, or anyone examining this witness on any list except Exhibit 9, and that

is the one we have examined him on here, and if there is a statement, there is one in the files.

The Court: If the witness knows of another list, and if any materiality can be shown, I will allow it to be inquired into, but let's ascertain if he knows of such a list.

Mr. Foreman: He has stated already, in answer to my question, he doesn't know if there was such a list, and that is the reason I asked for the statement, to ascertain if there was one, from the prosecution. I had already established he didn't know whether it was on the statement or not, and I was trying to determine whether it was or not is the reason I asked for the statement. I shall proceed, Your Honor, if it is agreeable with the Court.

The Court: Very well.

Q. (By Mr. Foreman) Mr. Sparkman, who was postmaster prior to 1954 in Freer?

A. Mrs. Una Kelly.

Q. And was or not the postmastership changed in 1954?

A. Yes, sir.

Q. And who was named postmaster then?

A. Billy G. Williams.

Q. Was Mrs. Una Kelly a partisan of the Old Party?

A. I would say she was.

Q. And was Mrs. Billy G. Williams a partisan party member?

A. He states he is independent.

Q. Oh, it is a he. Thank you. Well, aside from what he states, is he or not an active worker in the Freedom Party?

Mr. Wilkey: Your Honor, I believe this is immaterial to any cross examination of this witness here.

The Court: I will permit the question.

Q. By party, I don't mean Democrat or Republican. I mean Old Party or Freedom Party.

A. Sir, actually I have never heard him express his political views, really.

Q. One more question.

Isn't it true that at the same time Mr. Gonzales was fired as the postmaster at San Diego and replaced by acting postmaster Uvaldo Serna, and Una Kelly was discharged in Freer and replaced by Billy Williams, that every post office in Duval County was—the postmaster was discharged and a Freedom Party person installed?

A. I don't believe so, sir.

Q. Which person would you make an exception to that?

A. Seven Sisters.

Q. Seven Sisters?

A. Realitos and Concepcion.

Q. Well, as a matter of fact, at Seven Sisters there is just about seven sisters living there?

A. That is right.

Q. And it would be difficult to find anybody else there to read and write either English or Latin language?

A. That is right.

Q. Except the one person who runs a little store and also puts up the mail?

A. Yes, sir.

Q. Except for those, and Concepcion, sir, isn't it about big enough to throw a cat 50 feet?

A. It is a small office, yes, sir.

Q. And then you would be outside the city limits, wouldn't you?

A. Yes, sir.

Mr. Foreman: That is all, I think.

1-170 REDIRECT EXAMINATION

Q. (By Mr. Wilkey) One or two questions. Just for clarity so we will know what we are talking about, is not Exhibit 9, Government's Exhibit 9, are any of those initials in the righthand corner yours?

A. Yes, sir.

Q. All right. Now, when did you place those on there, not for the exact date, but when you were examined in regard to this list by whom?

A. Well, sir, my initials were here three times. On three different occasions. I am sure that that is the list I have examined.

Q. For clarity, you said that—and I am not attempting to quote your words exactly, and I don't want to misquote any of your meaning, but I believe you said, in regard to a list shown you in State Court by Mr. Sidney—

Mr. Foreman: Pardon me, Your Honor, Pardon me, Mr. Wilkey, I ask that the man be asked questions. I don't think you intentionally mean to coach him, but I think the build-up is a tendency to lead his own witness.

The Court: I will suggest leading questions not be asked. Rephrase your question.

Q. (By Mr. Wilkey) Turning your attention to the list which was shown you by Mr. Chandler in State Court,

do you or not recall, by any methods of identification which you may have used on this list and may have used on that list, whether or not that was the same or a different list?

A. No, sir.

Q. You cannot recall?

A. No, sir.

Q. All right, sir. Are you sure, from your identification here, that this was the list which Inspector Main and I showed you and interrogated you previously about?

A. Yes, sir. I have no—

Q. No doubts about it?

A. No doubts about it.

Mr. Wilkey: No further questions.

Mr. Foreman: No further questions, Your Honor.

The Court: Very well, sir. Court is recessed until 1:45. The jury is reminded of the instructions previously given.

1-172 AFTERNOON SESSION—MAY 7, 1957

The Court: Be seated, please.

I understand there is something you gentlemen want to take up with the Court out of the hearing of the jury.

(The following proceedings were had out of the presence and hearing of the jury.)

Mr. Wilkey: Yes, Your Honor, it is in regard to certain questions and matters which occurred before the noon recess, to which the Government interposed objections, and on occasion the Court instructed the jury to

disregard the implications or the questions asked by counsel, and they would take—render their verdict in this case on testimony of the witnesses. I recall, as a specific example of what we are talking about, a question asked by Mr. Foreman to Witness Sparkman to the effect, "did you testify or did you examine this list in—at the trial in Tyler where D. C. Chapa was being prosecuted for something in connection with the Benavides Independent School District." Now, that question was asked and Mr. Sparkman, of course, said no, for the simple reason Mr. Sparkman wasn't even in Tyler. After objection had been made to that, Mr. Foreman stated very frankly to the Court that he had asked this question and others to bring before the Court and jury the issue he was attempting to reach in this case, namely that this prosecution was formed on some sort of agreement, conspiracy, et cetera, in regard to, and was in effect a political prosecution. That statement of Mr. Foreman's as to why he asked the question shows very clearly that he knew it was improper at the time that he asked it, because he asked the question to get something before the Court and the jury when he knew the witness hadn't even been in Tyler. Now, there were a number of questions that were asked by Mr. Foreman, to which we had objection, some of which were sustained by the Court and others not. As a practical matter, it does very little good for the prosecution to object to matters which Mr. Foreman brings out in his question to get before the jury, when his question itself is basically improper, even though the jury has been instructed to disregard it. That is trying to undo the damage after the damage has been done.

The Court: Don't you have that in any lawsuit?

Mr. Wilkey: We have it in any lawsuit we have where the counsel asks improper questions and knowingly does so.

The Court: I don't believe I have ever tried a case in which improper questions were not asked, in which I did not have to give jury instructions.

Mr. Wilkey: I am sure that is right, Your Honor, but what I want to do is minimize the number of improper matters brought to the jury's attention.

The Court: Yes, I want to minimize that too.

Mr. Wilkey: And I ask that counsel for the defense be instructed to refrain from asking questions which contain insinuations which, if true, would be part of his case in chief, which are not based on facts in evidence, and based on matters really not relevant to this lawsuit.

I pass to the second point. The first point, what has been done and is improper, and caution should be given in advance to avoid damage. The second point is this, that nothing that is done or was done by State prosecution or in a State Court is relevant to this inquiry unless it affects the testimony of the witness who is then being examined. In other words, I realize full well that testimony given in these previous cases on facts which are relevant—

The Court: If you want the Court to comment on these various matters that you bring up, and if you go on and on, how will I know what to comment on or what to rule on when ruling is asked?

Mr. Wilkey: I will stop then on my first point.

The Court: What is the request?

Mr. Foreman: May I be heard on that point?

The Court: I want to know what is the request?

Mr. Wilkey: That counsel be instructed to refrain from questions which he admittedly, at least on one occasion, asked to point up an issue which he wants to develop in the case, when he knew the question was improper in the first place.

The Court: You mean the issue it is a political prosecution?

Mr. Wilkey: Not that issue, but the issue of other evidence in other trials, for example the question he asked Mr. Sparkman about whether he examined the list or testified about the list where D. C. Chapa was prosecuted at Tyler, when Sparkman wasn't even in Tyler.

The Court: I think it is perfectly proper for counsel to ask the witness, 'Did you examine this in Tyler," but I don't think the question should go on, 'Did you examine this in Tyler when you were the State's leading witness on D. C. Chapa's trial." I think the question properly should be "Did you examine it in Tyler," and the witness answered he was not in Tyler then, he was not in Tyler for any purpose, either at Chapa's trial or Joe Jones wedding. There is something to that objection. I don't know how I can bind counsel with general instructions. Counsel on both sides know what is proper. I don't know any ruling I can give, unless Government's attorney can suggest to me a ruling I can make which will cover all situations. I do agree with Government counsel that such questions should not be compounded

thusly, "Did you examine this in Tyler while you were doing something else or while something else was being done." I agree such compounding of questions and explaining of situations is not proper, and I will suggest that counsel refrain from that type of question throughout this trial.

Mr. Foreman: May I be heard, Your Honor?

The Court: Yes, sir.

Mr. Foreman: May it please the Court, I except to Mr. Wilkey's remarks that I asked something that I knew was improper.

The Court: Well, you do not have to explain that.

Mr. Foreman: That is a very improper remark on the part of Mr. Wilkey. I haven't asked anything that I think is improper. Since the Court has ruled as it has, I know now it is improper, and I shall be governed accordingly. The only place in the jurisdiction—I have practiced law in 30 years, I have ever heard a man repeatedly ask the judge to take over and join the prosecution, and warn and direct how, and to limit how defense counsel shall exercise whatever God given gift he might have by way of cross examination, is in this District and this court house, and Mr. Wilkey is the only one of his staff who has ever done that. He has eternally and repeatedly, throughout every case we have ever had, asked the jury be instructed, and counsel remonstrated with advice, or abjured, or otherwise directed, so putting counsel under the psychological restrain of fearing he might, through an innocent interpretation of what is or is not proper, violating Court's order, so he may later get to

his feet and say, "You told him not to do that. That is contempt of Court. You ought to join us and throw a stone at him." They do that in classrooms. That is perhaps a source of his professorial capacity as a trial lawyer, but we submit, there is nothing in State or Federal Statutes that tells a Court how he can tell counsel how to conduct his case.

The Court: There is not, and I don't know how— I don't think I can rule on anything in advance. I am not now ruling on anything in advance. I do admonish and instruct counsel on both sides to conduct the trial of this case properly and efficiently. Beyond that I don't know what to do.

Mr. Foreman: One other point. I don't recall having closely commiserated or conferred or advised Mr. Wilkey so that he should be able to know what I know or what I don't know. When he says I know the man wasn't in Tyler, I could say he is a bald-faced prevaricator if I was as bold as he is, but I'm not that bold. I don't know whether this man was in Tyler or not.

The Court: Whether the witness was there or not, I am sure the witness would know. I have made this suggestion, that you can, in an orderly manner in the case of this witness and others, say, "Did you see this in Tyler."

Mr. Foreman: Yes, I understand the Court's ruling.

The Court: The witness may say, "I have never been in Tyler." If he has never been in Tyler, he has never seen it in Tyler on any occasion, during the trial of Chapa or the wedding of Jones, or at a cock fight.

Mr. Foreman: I understand the Court's ruling, and I shall do my best to comply with it, but I will say to the Court, at the last trial, during which the jury was hung, it developed several witnesses were at Tyler, including Bill Main and Diego Heras, and established he was in Tyler and wasn't used, and I didn't know whether this man was in Tyler, and he didn't know whether I knew it or not. There were many witnesses who were in Tyler and weren't used.

The Court: The Court will allow defendant broad latitutde on cross examination of all prosecution witnesses, and you are entitled to ask any witness if they were in Tyler.

Mr. Wilkey: Your Honor has made the ruling that I wanted in regard to stating what was proper and not in those question. In regard to the solution of my information as to trial technique, it comes not from textbooks, but detailed observation of Mr. Foreman, particularly in the last trial. I, of course, have had the advice—

The Court: Now, are these continued comments serving any good purpose in the trial?

Mr. Wilkey: I have about two sentences more, and I want to go to my second point. I, of course, like he, have had the advantage of reading the transcript of the preceding case. I know very well what he has asked before and what he is likely to ask again. It is my duty to call that to the Court's attention in advance in order to prevent what, to my mind, is clearly improper questions being asked.

The Court: I want to say this, I don't want to get through this trial without some objections made.

Mr. Wilkey: I fully understand, and the purpose of this outside the presence of the jury was to reduce the number of those I would have to make objections to, improper questions.

The Court: It is suggested that can be reduced, sir.

Mr. Wilkey: As to the second thing, that is, as to the issue Mr. Foreman seeks to develop of any alliance, improper or otherwise, between our office and any state law enforcement agency, we submit that all of that, that is to say anything the State may have done or is doing in its prosecutions, is immaterial to this Federal prosecution for mail fraud. The indictment states what the charges are, and the Government is—

The Court: I agree with that. However, I can see a situation where, on the cross examination of a witness, defense counsel may want to say, "Did you testify in Tyler? Did you not testify to so-and-so?"

Mr. Wilkey: If he will say that, yes indeed.

The Court: I don't see how we can completely eliminate references to other trials that may have been conducted. I agree generally that they are immaterial. I don't see how, at this point, I can make a general ruling that will cover all situations.

Mr. Wilkey: Well, some of the situation which arose this morning, it seems to me, were clearly outside of any scope or relevancy to this Federal prosecution. Your Honor will observe, on inquiry about what lists he had seen, I did not object. That bore on the accuracy of his testimony here. It has relevance here, but when it comes to some of the other things asked, the real motive of counsel

was not to get an answer, but ask the question. These, we think, are immaterial and improper, and outside the proper scope of a lawyer's examination, particularly one with 30 years experience at the bar, and the Court has already stated, and this is my interpretation of what the Court has stated, unless they bear on the witness who is on the stand that they are, in effect, argument and outside the scope of examination. We intend to adhere to that standard of relevancy in making our objections. If it bears on the testimony of the witness on the stand, we have no objection, but if it goes outside that, we think insinuation by question is objectionable.

The Court: Or a question that goes to the credibility of a witness?

Mr. Wilkey: Oh, yes, bias and credibility.

The Court: And there may be other situations where a question may be allowed, which again makes it difficult for me to make any blanket ruling.

Mr. Foreman: May I speak?

The Court: You may, sir.

Mr. Foreman: The only effect of any such ruling, as requested in advance, any question being asked—

The Court: I am not going to make any ruling in advance.

Mr. Foreman: But even an instruction which might be subject to one interpretation by the prosecution and a different interpretation by the defense would be calculated to bring the defense in disrepute with the Court, and therefore the defendant, at least this counsel for

the defense, would hesitate to do that which his judgment and experience direct that he do for fear of offending the ruling of the Court, if any such ruling was in advance. In the first place, what Mr. Wilkey has reference to, evidently, and what happened here this morning, is my asking about the activities of certain State officials.

May it please the Court, the credibility of not only the witness, but of that portion of the case of his and allied and similar witnesses, if it may be made to appear to the Court that it has been manufactured and planned and set up for him by minions and emissaries of the prosecution would be calculated to discredit that phase of the Government's case, and we have shown from 1952 on down by these witnesses which he now directs an objection, an exception, and seeks an admonition and advance instruction, that at first started by Mr. Main but was in between carried on by minions of John Ben Shepperd, the Attorney General's office of the State of Texas—

The Court: I suggest you not refer to public officers as minions.

Mr. Foreman: Yes, Your Honor.

The Court: If you want to refer to anyone in John Ben Shepperd's office, I suggest you refer to him as assistant attorney general.

Mr. Foreman: They were not all attorneys general. Some were investigators.

The Court: Whatever capacity they may be in, but minion, I think, has a derogatory connotation, and I

don't think such will be allowed in this Court, not a blanket coverage at least, and I do not intend to allow it.

Mr. Foreman: I withdraw it. I did not so interpret the word, but I would rather have your interpretation of it. I remember there were minions of good as well as evil, as I recall the Old Testament.

The Court: We can refer to the attorney general's staff, which I think will cover everyone.

Mr. Foreman: Yes, Your Honor. I will follow that admonition as far as the word "minion" is concerned.

At any rate, we propse to offer as a witness in this case Mr. Wilkey himself, and establish as a fact that this prosecution and the preparation of this case was based on an exchange of information, he calls it, we call it grand jury testimony in violation of the State law, to prepare this case, and when we have done that, that perhaps is a basis for not wanting to go into it, but I assure the Court, either in or out of the presence of the jury, we propose to offer that, and if he testifies as I know he will, as he heretofore testified, he will testify that he did use the investigation, about which I made objections in advance of this indictment being read, therefore we feel that we should be permitted, not only to be unlimited on any trial of the case, in New Braunfels by showing on the back porch or the front porch or wherever it was, then Assistant Attorney General, Mr. Chandler, showed a list to Mr. Sparkman, or anyone else, and it ought to be subject to being considered by the jury as part of this case, for whatever it is worth. That is all we have to say on that point.

Mr. Wilkey: We have nothing further, Your Honor.

The Court: I have this comment I want to make. Mr. Wilkey took exception to the term "political prosecution." Political, in its broad sense, means in the public good, or something of that sort. In that sense, may not all prosecutions be political prosecutions? I don't think the term "political prosecution," as such, mean anything evil. Political activity may be evil, but just the term by itself has no evil implication. That is my own thought about the matter. I spent a number of years in political activity, and I have always been and am still proud of my political activity. I don't think any apology should be made because something is political, and I will say again, in the broadened accepted use of the term political, would not any trial be a political trial, if it is in the public interest and the public good?

If there is nothing further—

Mr. Foreman: There is one other matter, please.

The Court: Very well.

Mr. Foreman: Yesterday when we—there were present, in response to letters from the prosecution attorney's office, one Mr. and Mrs. Yzaguerre, husband and wife, and owners of a little store at Benavides. The reason we asked for a list of Government's witnesses, was so that we could ascertain and have sworn as witnesses those people, if they had not been sworn. We were furnished a list this morning about ten or eleven o'clock, on which the names of these two witnesses do not appear, although they were present at the court house in response to the direction of the Government, by correspondence, yes-

terday and it is our understanding and advice that they have been excused by the prosecution without conferring with the defense counsel. We would like to have those people sworn, if present. We would like to have, if the prosecution has it, an explanation of why they aren't here, if they have been excused without our having a chance to have them sworn. May it please the Court, we did not have these people subpoenaed because of the very limited funds and very great expense that is incident to bringing witnesses from the long distance here. May we ask for the record whether Abel and Hortensia—

The Court: What were those names?

Mr. Foreman: Abie Yzaguerre and Hortensia, the same last name, Y-z-a-g-u-e-r-r-e.

The Court: These two. Any others?

Mr. Foreman: There are several others we will use whom the Government has as original witnesses.

The Court: But these are the only ones you inquire of now?

Mr. Foreman: The others are here and appear on the list, but these do not, and these are material witnesses to the defense in this case.

Mr. Bottler: Your Honor, what Mr. Foreman says is true, these two witnesses were never subpoenaed for this case. By mistake, letters were sent out to them in sending out letters to other witnesses. When they showed up here, as they were never subpoenaed as Government witnesses and they were not Government witnesses, we told

them they were not such, and they were told they could go home. No subpoena has ever been issued for them at this trial.

The Court: Have they been called by the defense?

Mr. Foreman: No, Your Honor, they have not been. They received, as all other Government witnesses, a letter from the prosecuting attorney's office and—

The Court: Does the defense want them now?

Mr. Foreman: Yes, we do, and we are not able to put up the money to bring them here, and we think they could have been kept here by simply being sworn, had they not been arbitrarily excused.

The Court: I will say as a general rule, no one should be excused when they have been sworn and placed under the Rule, save by the Court.

Mr. Bottler: May I say something in that connection? These people were not interviewed when they came up here. They were not sworn as witnesses. When we discovered—

The Court: They were not sworn yesterday?

Mr. Bottler: No, they were not.

The Court: Then I would say they were not under the Rule.

Mr. Bottler: That is correct.

The Court: And they are available, under subpoena, to the defendant if the defendant wants them?

Mr. Bottler: That is correct. The only subpoena ever issued to them was to a grand jury.

The Court: I don't think it is incumbent on the Government to bring them as defense witnesses. Anything further?

Mr. Foreman: That is all, Your Honor.

The Court: Very well. Bring the jury in.

(The following proceedings were held in the presence and hearing of the jury.)

The Court: The Government may call its next witness.

1-189 DONOTO FLORES,

a witness called in behalf of the Government herein, having been first duly sworn on oath, testified as follows, to-wit:

1-189 DIRECT EXAMINATION

Q. (By Mr. Bottler) What is your name, sir?
A. Donoto Flores.
Q. Where do you live?
A. I live in Hebronville, Texas.
Q. How long have you lived in Hebronville?
A. All my life, 44 years.
Q. In what county is Hebronville?
A. Jim Hogg.
Q. How far is it from Benavides?
A. Approximately 28 miles, 27 or 28 miles.
Q. How far are you from the county line of Duval County?

A. If I'm not mistaken, six or seven miles to the county line.

Q. What is the population of Hebronville?

A. I would say it is around 4,000, 3500 to 4000, in that neighborhood.

Q. What direction is Benavides from Hebronville?

A. It is sort of east.

Q. Now, by whom are you employed?

A. By the post office department, sir.

Q. How long have you been employed by the post office department?

A. A little over 14 years now.

Q. And what is your present occupation in the post office?

A. I am postmaster.

Q. How long have you been postmaster?

A. Since October 16, 1950. That will be a little over six years now.

Q. And what was your position prior to being postmaster?

A. I was a clerk in the office.

Q. And what did you do, in your duties as a clerk in the office, and later as postmaster?

A. Our office is an office of the second class. We have to separate mail, which is the regional mail, incoming parcel post, letters. We all have to work on that.

Q. Do you deliver mail, or do people in Hebronville have to come into the post office?

A. We don't have city delivery. They call at the post office for their mail.

Q. They call at general delivery?

A. Yes, sir.

Q. And you have post office boxes?

A. Yes, sir.

Q. Do you have a Star route?

A. We have two Star routes out of Hebronville.

Q. And what is a Star route?

A. A Star route, the mail works under contract. He contracts for carrying the mail to certain points for so much a year, and we separate the mail for him, and there are boxes on the road, and he distributes the mail in that manner.

Q. And in separating the mail for distribution to the boxes on the Star route, did you become generally familiar with the names on the Star route?

A. Yes, we do, in that it is a small community, we do.

Q. Now, do these—all right. Skip that. From living all your life in Hebronville, and your activities as postal clerk, and sorting mail, have you become generally familiar with the names of the adults—

Mr. Foreman: I object as leading and suggestive.

Q. State whether or not you have become familiar with the names generally, the adult population?

A. I am.

Q. All right. I show you Government's Exhibit 9, and ask you to check each page thereon, and tell us whether or not you have examined this document and each of the names that appears thereon?

A. Yes, I have examined this document.

Q. Do you know any of the names which appear on this Government's Exhibit 9?

A. With one exception. There is one name where there is a party at home that signed his name M. E. Garza. His

name is Medarto. The E, I am not familiar with what it stands for, but he signed his name as M. E. Garza.

Q. Where does he live?

A. He is living in Louisiana in a little town by the name of Buras.

Q. Where did he live prior to moving to Louisiana?

A. He was going to school at Kingsville for some time, and then he went to the oil field work in Hebronville and the surrounding territory, and then after the—after he quit work in the oil fields, he was a schoolteacher.

Q. Where did he teach school?

A. He taught in Hebronville.

Q. Do you know any other names that appear on this Exhibit 9 except that of M. E. Garza?

A. I don't know that of any of the others.

Q. Do you know any of the people whose names appear on here?

A. No, I don't.

Mr. Bottler: No further questions.

1-193 CROSS EXAMINATION

Q. (By Mr. Foreman) What county is your city in?

A. Jim Hogg.

Q. That is not even in the 79th District, is it?

A. I don't know what district it is. I know it is in Jim Hogg County.

Q. Who is your District Judge?

A. Judge Wright. He is stationed in Laredo.

Q. Then, Mr. Flores, when did you start knowing about lists, of being shown lists so you could examine and testify about them?

A. That was some time last—let's see—some time last October, if I am not mistaken.

Q. And who was it that produced the first list of names for you to examine and testify about?

A. Inspector Main, Ranger Joe Bridge, and Mr. Bottler.

Q. Were they together?

A. Yes.

Q. Who is—who was Joe Bridge?

A. State Ranger. He is deceased now.

Q. He was a State of Texas employee?

A. I assume, yes. He was a State Ranger.

Q. Mr. Ed Bottler is the man prosecuting here? This is the gentleman just questioning you?

A. That is correct.

Q. And the other party was Mr. Bill Main?

A. Inspector Main, yes, sir.

Q. W. D. Main, and where did those three gentlemen approach you with reference to qualifying you to testify as you have testified?

A. In my post office.

Q. And do you recall about what time in October it was that these state and federal representatives called on you?

A. No, I don't. I couldn't say definitely. I couldn't say positively just what time in October. I know we came here in November the first time, and it was sometime previous to that, say, three or four weeks, but as to the exact date, I couldn't say.

Q. And you knew then what you would be expected to testify to, from the minute you talked with these three gentlemen?

A. I was shown the list and they asked me if I knew

any of these persons, and I said no, with that one exception:

Q. And from then on, you knew that would be your testimony and what you would be here for?

A. I assumed, yes.

Q. How many places have you appeared to testify?

A. Just in Houston.

Q. Just in Houston. Did you have any advance notice or communication, correspondence or otherwise, from either the representative of the State of Texas, Joe Bridge, or the representative of the United States District Attorney's office, Mr. Ed Bottler, making an appointment and setting up this meeting, or did they come casually?

A. I was subpoenaed by a United States Marshal to appear here.

Q. You were called up here before it was ever known whether you knew those names or not?

A. No. I was shown the names first, then after that, I got a subpoena to appear in Houston on a certain day at a certain hour.

Q. I was talking about the first time you were shown the names. You hadn't been given a subpoena then?

A. No, like I say, I was given the names to be checked through, and then right after that, right after their visit to my office, I got a subpoena from the United States Marshal served by him to appear in Houston on November 6, if I'm not mistaken.

Q. But all three of these gentlemen, Mr. Bridge, Mr. Bottler and Mr. Main, first came to Hebronville?

A. That is right.

Q. And then did you confer with them again when you got to Houston?

A. Yes.

Q. The same three?

A. Yes—no, only Mr. Bottler and Mr. Main.

Q. Had you previously talked with Mr. Bridge? Did he find you as a witness for these other gentlemen, or had you talked with anyone about testifying before Mr. Bridge, Mr. Bottler and Mr. Main appeared on the occasion to talk to you?

A. I didn't talk to them. They talked to me, Mr. Bottler and Mr. Main. Mr. Bridge didn't have anything to do with it. He was there in the office when they came to the office with this list of names.

Q. My question is, had he talked with you before that day?

A. Mr. Bridge?

Q. Yes.

A. No.

Q. Later, did Mr. Bridge produce another list or the same list?

A. I never saw it again until I came to Houston.

Q. Did you initial it down there?

A. I initialed all the pages.

Q. Down in the post office in Hebronville?

A. No, here.

Q. Did you mark any list—was it the same list, the identical paper, or simply the identical names?

A. It has all the pages with my initials on them.

Q. Mr. Flores, I am making a distinction between the intrinsic list itself, the actual 15 pages of paper, and the names that might appear on the paper. Was it this paper itself that you saw in Hebronville in October, that you saw here today, or was it simply the people's names were the same? I have now reference to the paper, assuming there are new names on them.

A. As far as the quality of the paper, I couldn't say.

Q. Do you know whether it was the same number of sheets?

A. No, I didn't count the sheets over there, and I didn't count them here.

Q. Do you know how it was spaced?

A. Double-spaced.

Q. This is about triple-space, isn't it?

A. Something like that.

Q. Was the spacing triple or double?

A. Something like that, what they are now.

Q. At any rate, at that time, in the post office at Hebronville, you did not identify or mark your initials so as to identify the list in the future?

A. No, sir.

Q. Where was it here in the court house, the Federal Building, the post office building at Houston, was it that you and Mr. Bottler conferred?

A. I was in Mr. Main's office, Inspector Main's office.

Q. Was he, Mr. Main, Inspector Main, there?

A. Yes.

Q. It was with Mr. Main and Mr. Bottler, and not Mr. Bridge here?

A. No, I said Mr. Bridge was in Hebronville.

Q. I know, but here?

A. Mr. Main.

Q. And Mr. Bottler?

A. Were the only ones.

Q. And that was in November?

A. November, Yes.

Q. And before about October, you knew nothing about any list?

A. No, it was shown to me at that time.

Mr. Foreman: That is all.

1-199 REDIRECT EXAMINATION

Q. (By Mr. Bottler) Did either Mr. Main or I ever tell you to tell anything but the truth on the witness stand?

A. That is right. Just the truth is all I can say.

Mr. Bottler: That is all.

Mr. Foreman: No further questions.

The Court: You may step down.

1-199 OTTO B. RUNK,

a witness called in behalf of he Government herein, having been first duly sworn on oath, testified as follows, to-wit:

1-199 DIRECT EXAMINATION

Q. (By Mr. Wilkey) State your name?
A. Otto B. Runk.
Q. Where do you live?
A. Alice, Texas.
Q. How long have you lived there?
A. About 33 years.
Q. What size place is that?
A. That, I estimate now, is 21,000.
Q. What was it when you came there?
A. About 1880.
Q. By that you mean 1,880?

A. That is right.

Q. During your 33 years in Alice, how have you been employed?

A. In the post office department.

Q. What job did you have there first when you came there with the population about 1880?

A. When I first went to the post office, I was just a clerk.

Q. What did you do as a clerk?

A. Waited on the windows, dispatched mail, put up mail, in fact, everything there was to be done in a post office.

Q. How long were you postal clerk?

A. About 19 years.

Q. Then what did you become?

A. Assistant postmaster.

Q. What are you today?

A. Assistant postmaster.

Q. Do you have a small, or large, or what size acquaintance do you have in Alice and the sorrunding territory?

A. I have a pretty wide acquaintance in Alice.

Q. Besides people whom you know by face and name, do you know of people by name from your work in the post office there for 33 years?

A. Yes, sir.

Q. What area does the Alice post office cover?

A. Counting the two rural routes, it covers about 15 or 20 miles.

Q. What county is Alice in?

A. Jim Wells County.

Q. How far is Alice from the Duval County line?

A. About ten miles.

Q. How far is Alice from San Diego?

A. Ten miles. The line runs about the same distance.

Q. And what county is San Diego in?

A. Duval.

Q. How far is Alice from Benavides?

A. About 26 miles.

Q. About how far is Alice from Freer?

A. Thirty-one, I believe it is. Thirty-seven, maybe, somewhere along in there.

Q. What other post offices, if any, are there in Jim Wells County?

A. Sandia, Orange Grove, Premont and Ben Bolt.

Mr. Foreman: Wait a minute. I missed the second one.

The Court: Orange Grove.

Q. Are there any rural routes that go out from the Alice post office there?

A. Two.

Q. I show you what has been identified as Government's Exhibit 9, and ask you if you have seen that before?

A. I have.

Q. Have you, on a previous occasion, examined each of the names on that list, Exhibit 9?

A. I have.

Q. I will ask you first, among your personal acquaintances, those people you know both by name and face, do you know any of the people listed on this list?

A. I do not.

Q. All right. Going to people whose names you might know, but whose personal acquaintance you might not have made, are any of the names on this list familiar to you. Are any of the names familiar to you?

A. No, sir.

Q. Now, then, in response to our request, did you make inquiry around Alice there for those names listed on Government's Exhibit 9?

A. I did.

Mr. Foreman: I object to that as leading and suggestive.

The Court: What was the question?

Mr. Foreman: Also in addition to being leading and suggestive, I object to it as calling for hearsay.

The Court: Objection overruled.

Q. You may answer, sir.

A. I did.

Q. Where did you inquire?

A. The Central Power & Light office, the Houston Natural Gas Company of Alice, the City Water Works, the tax records.

Mr. Foreman: I object to that also, may it please the Court, as calling for hearsay, calling for testimony from witnesses unidentified, and unsworn, and not subject to cross examination.

The Court: The testimony is that he did inquire at those other places. He hasn't testified as to what he learned there, has he?

Mr. Foreman: He testified to that before. He was asked the specific places. May it please the Court, he has already testified he didn't know of any.

The Court: What says the Government?

Mr. Wilkey: It is perfectly admissible. As yet, I have

not asked him what he found there. I intend to do so, and have authority for its admissibility.

The Court: That will be allowed.

Q. Name those places, starting at the beginning, for clarity so you won't miss any.

A. The Central Light & Power, the Houston Natural Gas, City Water and Gas records, sheriff's department, county tax assessor's department, and the assumed names record in the County Clerk's office.

Q. Where are those places located?

A. In Alice, Texas.

Q. Now, then, as a result of your inquiry, and I will caution you not to answer this question if there is objection until it has been ruled upon, as a result of this inquiry did you find any names listed on Exhibit 9?

Mr. Foreman: We make the same objection in addition to the fact that it is hearsay, calls for unsworn testimony of persons not even identified and whom the jury has no right to see and the defendant to cross examine it attempts to get—the Best Evidence Rule, as to what the clerk's record did show would be a certified copy of those records and a certificate to the fact that something did not appear there.

The Court: I don't believe it is strictly hearsay. The witness is testifying to the results of searches made by him, and as to where the searches were made. The jury may accept it for whatever value it is worth. The jury does not have to accept the search and the work of this man as infallible, but for the purpose for which it is offered, it will be allowed.

Q. (By Mr. Wilkey) You may answer, sir.

A. Restate the question, please.

Q. The question was, in your search of those various places, did you find any of the names which appear on Government's Exhibit 9?

A. I found one in the phone book with the same initials.

Q. What was that name, sir?

A. R. E. Garcia.

Q. Did you find any others by the name of R. E. Garcia?

A. That is all.

1-205 CROSS EXAMINATION

Q. (By Mr. Foreman) When did you become assistant postmaster, please, sir?

A. I don't remember the year, but about 12 or 15 years ago.

Q. At that time, what approximately was the population of Alice?

A. About 10,000.

Q. What is its population now?

A. I estimate 21,000.

Q. Then it is approximately double what it was when you became assistant postmaster?

A. That is right.

Q. And as assistant postmaster, do you still handle mail, sort it, deliver it, wait on windows, or do you have a specialized work there in the post office?

A. I wait on the windows, but I don't handle much mail unless it is necessary.

Q. Is most of the mail in Alice delivered by city delivery, or is it delivered at the window?

A. The biggest part is delivered by city delivery now.

Q. Would you estimate the portion delivered at the window?

A. I wouldn't have any way of estimating that.

Q. What portion of your time is devoted to the window, Mr. Runk?

A. About six hours a day, four to six hours a day.

Q. Is that your normal post of duty?

A. It is now.

Q. When did that assignment commence by which you appear at the window four to six hours a day?

A. Practically every since I have been there.

Q. Every since you have been assistant postmaster?

A. Yes.

Q. What is your main duty at the post office?

A. Well, to work the money order window, COD window, registered window, stamp window, general delivery window, and have charge of the stamps.

Q. Actually, you are in charge of the books and records, and fiscal affairs of the office?

A. When the postmaster is absent, yes.

Q. And there are other clerks, while most of your time is connected with stamps, special delivery or money orders?

A. Well, COD and registry.

Q. Anything that has to do with money comes under you, and you sit at those windows?

A. That is right.

Q. And the main traffic of the deliveries is at the windows you do not customarily wait on?

A. The money order window is a main window.

Q. It is a main window?

A. Yes.

Q. I understand. Mr. Wilkey said, "At our request." Whose request was "our" that you did all of your investigation and inquiring about which the prosecution asked you? Who is this "our"?

A. Representatives of the inspection service gave me the list.

Q. And who was that?

A. Mr. Main.

Q. Did he tell you that Mr. Wilkey wanted that information?

A. No, sir.

Q. Did you know it was coming from Mr. Wilkey?

A. No, sir.

Q. And when you went wherever you were, you were undertaking to establish the fact that there were no such people as appeared on this list, were you not?

A. How was that?

Q. When you took this list and made whatever search and investigation, it was to establish the fact that there were no such people, was it not?

A. I don't think so. The way I understood it was to establish if there were any such people.

Q. And that is what you undertook to do?

A. Yes.

Q. When did you undertake to do this work, Mr. Runk?

A. Oh, about in March, or somewhere back in there.

Q. March of 1957?

A. No, this past March, I made that check.

Q. A month and a half ago?

A. Something like that.

Q. You were up here and testified, I believe, in November?

A. Yes.

Q. And at that time, you hadn't made any such search?

A. Yes, sir, I had.

Q. You made it before then?

A. I made one, yes, sir.

Q. A different list?

A. I don't know whether it was or not. It was the same list, as I recall it.

Q. When did you first start making—when did you first make any such check, and in response to whose request, please, sir?

A. The first must have been October of 1956, the first time I went at it.

Q. And then you made a new roundup?

A. In March, or whenever it was, a month and a half or two months ago.

Q. In what form did you receive that instruction to make this March search, from Mr. Main?

A. That is right.

Q. Was it in writing or in person?

A. In person.

Q. Was that in person to qualify you to testify as you have testified?

A. I don't know about that.

Q. Was the first search or investigation for the purpose of qualifying you to testify as you did testify in November?

A. I couldn't say.

Q. Well, did you know you were going to be called as a witness and the result of whatever you did or didn't do would be asked about?

A. I did not at the time.

Q. At which time?

A. The first time.

Q. Did you the second time?

A. Well, I had an idea, but I didn't know.

Q. Mr. Runk, among your circle of friends and acquaintances in Jim Wells County, of Alice, do you visit in the homes of Latins or the Anglos?

A. Well, I have no occasion to visit in the Latins.

Q. Then all your friends, your social acquaintances, your church, your lodge, your luncheon clubs, whatever social connections you have, are Anglos?

A. Yes, sir.

Q. And by Anglos we in Southwest Texas mean anybody except persons of Latin-American or Mexican descent, don't we?

A. I think so.

Q. Are you as well acquainted among people of Latin-American descent in Jim Wells County as you are among the people of Anglo descent?

A. Well, I wouldn't know whether I was as well acquainted, but I know a lot of Anglos—Latins.

Q. What is your best judgment in that regard, as to whether you are as well acquainted among the Latins as you are among the Anglos?

A. I wouldn't have any idea.

Q. You did testify at the last trial you were not as well acquainted among Latins as you were among the Anglos, did you not?

A. I don't remember.

Q. In Jim Wells County, that is a different county from Duval. That is not the same county Benavides is in, is it? What county is Benavides in?

A. Duval.

Q. What county is Alice in?

A. Jim Hogg.

Q. And it is Alice where you are assistant postmaster?

A. Yes.

Q. And they do have their own postmaster in Benavides and San Diego, and at other places in Duval County?

A. Yes.

Q. And how far is it from where you live to, say, Robstown?

A. About 27 miles.

Q. How far is it to Corpus Christi?

A. Forty.

Q. Does Corpus Christi have a population of 101,000, and some hundred?

A. I wouldn't know, but I think it has.

Q. That is what they claim on the sign going into town, isn't that correct?

A. Somewhere in that neighborhood.

Q. And there are many contractors, artisans, craftsmen in Corpus Christi, aren't there?

A. I imagine so.

Q. As a matter of fact, Corpus Christi is the Meeca or the metropolitan center for the area of business of all the counties around there, such as Jim Hogg and Brooks and Jim Wells and Duval, is it not?

A. I couldn't say.

Q. Well, if you don't find what you want to buy at Alice, don't you go to Corpus?

A. Not necessarily. You might go to San Antone.

Q. And you might order from Sears & Roebuck?

A. That is right.

Q. How far is San Antone, Mr. Runk?

A. 125 miles.

Mr. Foreman: I think that is all, Mr. Runk. Thank you, sir.

Mr. Wilkey: No further questions, Your Honor.

The Court: Step down, please.

1-213 C. R. CUELLAR,

a witness called in behalf of the Government herein, having been first duly sworn on oath, testified as follows, to-wit:

1-213 DIRECT EXAMINATION

Q. (By Mr. Bottler) State your name, sir?
A. C. R. Cuellar.

Mr. Foreman: I didn't get his first name.

The Court: C. R.

A. My first name is a long one, Cuahdemoc.
Q. Where do you live, sir?
A. I live in Realitos, Texas.
Q. How long have you lived in Realitos?
A. Since the year 1910.
Q. In what county is Realitos?
A. Duval.
Q. How many people live in Realitos?
A. I will say about 500.
Q. What is your occupation?
A. Postmaster.
Q. How long have you been a postmaster?
A. Since 1948.

Q. How many other people work in the post office besides yourself?

A. My sister.

Mr. Foreman: Did he say his sister or assistant?

A. My sister.

Q. Do you have city delivery in Realitos, or do people pick up their mail in the post office?

A. No, sir, I don't have city delivery. The people pick up their mail in the post office.

Q. Do you have general delivery?

A. Yes, sir.

Q. Do you have post office boxes?

A. Yes, sir.

Q. All right. Now, everyone has to come to the post office to pick up the mail?

A. That is correct.

Q. Are you familiar or not with the adults in your community in Realitos?

A. Sir?

Q. Are you familiar with the adult population of Realitos?

A. Yes, sir.

Q. How far is Realitos from Benavides?

A. About 12 miles.

Q. In what direction?

A. I would say kind of south from Benavides.

Q. I will hand you Government's Exhibit 9, and ask you to check each page thereof, and tell us whether or not you have examined this document, and each name that appears thereon?

A. Yes, sir.

Q. Do you know any of the names that appear on Government's Exhibit 9?

A. No, sir.

Q. Do any of these people live in Realitos?

A. No, sir.

Q. Have you ever heard of any of the names of the people who appear hereon?

A. No, sir.

Mr. Bottler: No further questions.

1-215. CROSS EXAMINATION

Q. (By Mr. Foreman) How many people do live in Realitos?

A. I would say about 500, sir.

Q. Counting, how many miles in each direction has Realitos?

A. What do you mean?

Q. That is what I mean exactly. Giving the post office as a central point, how many miles do you have to get 500 people?

A. I have to go all around the town to get the 500 people.

Q. Is it incorporated? Isn't it a designated geographic point around which a lot of people, who live on ranches and work on ranches, get their mail? Isn't that all Realitos is?

A. Most of these people live in the town of Realitos, but some live outside but we consider that our community, all of the people who live around Realitos.

Q. Thank you, but is there a limitation to the city limits of Realitos?

A. We don't have no limitation to Realitos.

Q. What you mean is approximately 500 people are

served by the post office, over which you and your sister preside?

A. That is true.

Q. And that might extend an area of 12 or 15 miles in any given direction?

A. I don't believe that far, but maybe four or five miles, yes, because some of my customers live outside the community.

Q. Now, we have got that. Mr. Cuellar—

A. Yes, sir.

Q. —you were kind enough to spell Cuahdemoc. How do you pronounce that?

A. "Quaddymock."

Q. Were you named for the beer manufactured in Mexico?

A. My name is for the first King of Mexico during the Indian Empire.

Q. All right. Now, Mr. Cuellar, were you—are you a partisan of any given party in Duval County, to-wit the Freedom Party?

A. Sir, would you repeat the question?

Q. I am not asking—have you or not been active in the activities of the Freedom Party in Duval County?

A. No, sir.

Q. Did you or not assemble with eleven other members of the Freedom Party?

A. I don't believe so.

Q. Under what is commonly known down there as the "Broadfoot" Grand Jury?

A. Oh, yes, sir, I was on that grand jury.

Q. And weren't the other eleven members members of the Freedom Party?

A. I can't tell you.

Q. Do you know they weren't?

A. I can't tell you that.

Q. And did you or not, together with eleven others, return approximately 104 indictments against those and other members of the Old Party, not indicting a single member of the Freedom Party?

Mr. Bottler: Your Honor, that calls for a conclusion and knowledge beyond the scope of this witness. The indictments would be the best evidence. We object to the question.

Mr. Foreman: We asked it on bias and prejudice, Your Honor. We have already established by Mr. Serna—

The Court: Isn't it a rather broad and sweeping question?

Mr. Foreman: It may be duplicitas. Perhaps I should break it down.

The Court: I will let him answer it if he can.

Q. (By Mr. Foreman) Tell us whether or not you and eleven other men illegally returned—

The Court: I will sustain the objection.

Mr. Foreman: I will withdraw the word illegally—whether or not you and eleven other men returned 104 indictments, in which the names of these defendants appeared on many, if not all of these indictments?

A. Well, we didn't return the indictment just because they belonged to a certain party, if that is what you want to know.

Q. The question is, regardless of why you returned them, did you or not return 104 indictments against these

people, who are sitting here as defendants, before this jury, state court indictments, did you or not?

A. Yes.

Q. You did?

A. Yes.

Q. And isn't it true that that indictment, that that grand jury was assembled for the purpose of returning these indictments?

A. I don't know, sir.

Q. Isn't it true the indictment was impaneled, drawn and impaneled by an imported judge by the name of Broadfoot?

Mr. Bottler: I object to the question of the indictment being impaneled.

Mr. Foreman: I beg your pardon. I appreciate the comment.

The Court: Objection sustained.

Mr. Foreman: I withdraw the question in the interest of my reputation.

The Court: I do not know how far you are going. I don't want to try any of those indictments. We have some here.

Mr. Foreman: We don't have those because they were all thrown out because the grand jury was invalid.

The Court: I will instruct the jury not to consider the statement of counsel "thrown out," because a grand jury was invalid. This jury does not need to know about those indictments. This jury does not have to try any of those indictments.

Q. (By Mr. Foreman) Mr. Cuellar, you know every man sitting here is a member of the Old Party, known in Duval County as the Parr Party, don't you?

A. Well, I don't know for sure whether they are members of the Old Party or not.

Q. Do you know a single one that isn't?

A. I can't tell you because—

Q. Sir?

A. I can't answer that question because the way things are in Duval County, it is hard to tell who is who.

Q. At any rate, at the time you were sitting on that grand jury, you knew they were members of the Parr Party, don't you?

A. I have the impression that they were.

Q. And do you have an impression that a single member of this grand jury was a member of that party?

A. Well, this much, that I was one.

Q. I beg your pardon?

A. I will say I was one member of the Old Party.

Q. When?

A. When I was on the grand jury.

Q. You were?

A. Yes, and I am still a member of the Old Party.

Q. You are?

A. Yes, sir.

Q. Mr. Cuellar, was that grand jury assembled in place of another one that had been selected by the regular District Judge, the one who served on—

Mr. Bottler: This is completely immaterial to any issue.

The Court: Objection sustained.

Q. (By Mr. Foreman) You say your sister is your assistant?

A. Yes, sir.

Q. Then she is assistant postmistress?

A. Well, she is my helper. That is all there is.

Q. Is the post office at Realitos in a separate building, or operates in connection with some other business?

A. It is in connection with a filling station there that is run by somebody else, not by me.

Q. The filling station where the post office is is operated by someone else?

A. Yes.

Q. Who is that?

A. E. G. Ramirez. He is the owner. In fact, he is the owner of the whole building.

Q. All you do is be the postmaster?

A. Yes.

Q. What else do you do?

A. Well, I am a notary public.

Q. Is that all?

A. Yes.

Q. You just sit there and notarize and pass out mail?

A. Sometimes. Sometimes I have to go out and take some signatures for somebody.

Q. You don't have any other business?

A. No, sir.

Q. And you all have mail there every day?

A. Yes, sir.

Q. It comes out of where?

A. Some comes from Laredo and some come from Robstown.

Q. How does it come?

A. By truck.

Mr. Foreman: That is all.

Mr. Bottler: That is all.

The Court: Very well, sir, you may step down.

Mr. Bottler: Our next witness is Jose Lozano. This witness, I am informed, will need an interpreter, Your Honor.

The Court: Will you ask him if he has been sworn?

The Interpreter: Yes, Your Honor, he has.

1-224 JOSE C. LOZANO,

a witness called in behalf of the Government herein, having been first duly sworn on oath, testified through the interpreter as follows, to-wit:

1-224 DIRECT EXAMINATION

Q. (By Mr. Bottler) Where do you live?
A. Concepcion, Texas.
Q. How long have you lived in and around Concepcion?

The Court: There are some of the juror who are behind you, Mrs. Logan. Will you stand back this way and face toward the jury?

The Interpreter: May I hear the question again?

Q. How long have you lived in and around Concepcion?
A. All my life.
Q. How old are you?
A. I am 70 years old already.
Q. How are you employed?
A. I am the postmaster for Concepcion.
Q. How long have you been postmaster?

A. I have been there 13 years.

Q. Can you speak and read any English?

A. Yes, sir, not very well though.

Q. All right. How many people live in Concepcion?

A. Do you mean in the town, or all around the section?

Q. In the area which your post office services?

A. I believe about 150, more or less. The ones that receive mail from my office.

Q. Are you familiar with the names of the people who live in Concepcion, and who receive mail through your post office?

A. Well, I know some of them. I wouldn't say all.

Q. I will hand you Government's Exhibit 9, and ask you to look at each page of it and see if you have examined it before?

A. Do you mean to ask me if I have looked at the names, or just the list?

Q. Have you looked at the names on that list, at any time prior to coming into the courtroom today?

A. I don't know any of the names on this list.

Q. Now, what occupation do most of the men have who live in Concepcion?

A. Some work on the farms and the dairies. Only we have two little grocery stores. That is the occupation of the inhabitants there.

Mr. Foreman: The thing I missed was the stores.

The Interpreter: Two little grocery stores.

Mr. Foreman: Oh, thank you.

Q. (By Mr. Bottler) Do you deliver mail to people out of your post office, or do people have to come into the post office to get their mail?

A. They come to the office for their mail.

Q. And do you hand out the mail?

A. Yes, sir.

Q. And none of the names which appear on Exhibit 9 are familiar to you?

Mr. Foreman: That is leading and suggestive.

The Court: Objection sustained.

Mr. Bottler: Pass the witness.

1-226 CROS EXAMINATION

Q. (By Mr. Foreman) Mr. Lozano, what class post office is Concepcion?

A. It is fourth class office.

Q. How far is it located from the race track?

A. No, we don't have race track there.

Q. No race track? Mr. Lozano, did you take a competitive examination to qualify as postmaster?

A. Yes. I have 75 points.

Q. Then you can read English and speak it better than anybody else, at least that was considered for the postmastership, can't you?

A. No. I wouldn't say that.

Q. Do you know anybody else who can read English any better than you in Concepcion?

A. Oh, yes, sir.

Q. Do they work with you in the post office?

A. Nobody.

Q. Do these 950 customers of yours include the little children and adolescent teen-agers also?

A. Yes, sir.

Q. And you are sure that none of these contractors, builders, electricians, decorators, whose names appear on this list, Government's Exhibit 9, reside surreptitiously in Concepcion?

A. I don't know anyone by that name in Concepcion.

Q. What area do you serve in miles? How many miles is the longest point from your post office?

A. Well, only the distance from Realitos to Concepcion. That is about 17 miles.

Q. Do you have an R.F.D. route out of your post office?

A. Only one mail carrier that is connected by the post office.

Q. How is this mail delivered to you, sir?

A. The Star Route brings the mail to us.

Q. And you are on an R.F.D. yourself, aren't you?

A. I receive the mail and I sort out the one that belongs to Concepcion, and then I give to the Star Route the one that has to go out of Concepcion.

Q. Where does the Star Route man get the mail he brings to Concepcion?

A. It comes from Realitos.

Q. Then everything that you might know about any piece of mail, every piece of mail you would handle, would originally be handled by Mr. Cuahdemoc Cuellar of Realitos?

A. The postmaster in Realitos does not go over all the mail, only the packages, but he sorts them out and sends them to Concepcion.

Q. Where is the mail, that does come for Concepcion, sorted so as to get in a sack for Concepcion, if you know?

A. I don't know. Either that separation of mail is in Alice or in Skidmore.

Q. By the way, is the postmaster from Skidmore here?

A. I don't know him.

Q. All right. How far is Skidmore from the community of Concepcion?

A. It is further than Alice, and I am not able to tell you the distance.

Q. Now, Mr. Lozano, when were you first approached about being a witness in this case?

A. Well, I was ordered to come here on November 7.

Q. February 7?

A. November 7.

Q. And when were you first shown the list from which you are now testifying?

A. I am not sure how long before I was asked to come here, a gentleman came and showed me that list.

Q. Well, was it sometime in 1956 or some other year, 1957, or some other year?

A. Yes, it was in 1956. I don't exactly remember the month, but I am almost sure it was about a month previous to my coming here in November.

Q. Do you know who that gentleman was?

A. No, sir. He told me he was a federal employee, but I don't remember his name.

Q. Do you know Mr. W. D. Main?

A. Since I started coming here, I met Mr. Main.

Q. Was it he?

A. I don't think so. I don't remember if it was.

Mr. Foreman: That is all, Mr. Lozano.

1-229 W. L. MOSES,

a witness called in behalf of the Government herein, having been first duly sworn on oath, testified as follows, to-wit:

1-229 DIRECT EXAMINATION

Q. (By Mr. Bottler) What is your name, sir?

A. W. L. Moses.

Q. Where do you live?

A. Seven Sisters.

Q. How long have you lived in Seven Sisters?

A. A little more than 20 years.

Q. In what county is Seven Sisters?

A. Duval.

Q. How far is it from Benavides?

A. About 40 miles.

Q. What direction is it from Benavides? How do you get there?

A. Go down by Freer, and then on over to Benavides.

Q. Is that 40 miles by highway, or 40 miles by straight-line distance?

A. By highway.

Q. How far by straight-line distance?

A. I couldn't say.

Q. How many people live at Seven Sisters?

A. Well, there is about 100 people, I suppose, in the community there.

Q. Who is the postmaster there?

A. I am.

Q. How long have you been postmaster?

A. Eighteen years.

Q. Do you have any other occupation?

A. Yes, sir, we have a little grocery store.

Q. Are you familiar with the people that live in Seven Sisters?

A. Yes, sir.

Q. Are you familiar with—strike that. Does your post office serve any people that live outside the community there directly?

A. Well, not generally. There is some ranchers that get mail there from out in the Roma Alto neighborhood.

Q. Are you familiar with all the people who get their mail at your post office?

A. Yes, sir, I know them personally.

Q. I will hand you Government's Exhibit 9, and ask you to look at each page and tell us whether you examined this document and each name on it?

A. Yes, sir, I see my initials on each and every page.

Q. And have you examined that document before?

A. Yes, sir.

Q. Are you familiar with any of the names which appear on there?

A. No, sir.

Q. Do any of those people live in Seven Sisters, or get their mail from your post office?

A. No, sir.

Mr. Bottler: No further questions.

1-231 CROSS EXAMINATION

Q. (By Mr. Foreman) Mr. Moses, are there seven sisters in Seven Sisters?

A. There was.

Q. Are there approximately 100 people, men, women and children? Does that include everyone in the community you are talking about?

A. Well, unless there has been some born since I left.

Q. Have you had any radiograms?

A. Sir?

Q. You haven't heard, since you left, whether anything happened?

A. No, sir.

Q. All right. You precluded the newborn infants up to the time of your departure?

A. Yes.

Q. When did you leave?

A. I left at eleven o'clock Sunday morning.

Q. Thank you. Now, Mr. Moses, what is the predominant occupation of the male citizens of Seven Sisters?

A. Well, there is an oil field.

Q. I should say their vocation.

A. There is an oil field, and I don't call it vocation. I would call it labor.

Q. You would call it labor?

A. Yes, sir.

Q. Then it is hardly calculated a person looking for a bricklayer, contractor, or electrical worker, plumber or plasterer, would seek the services of a citizen of Seven Sisters, is it?

A. There wouldn't be any of that kind of people out there. I never heard of them, if there was.

Q. Then you are here in response to the request of Mr. W. D. Main, plus a subpoena from the United States Government?

A. Yes, sir.

Q. And you appeared here at the former trial of this case, did you not, Mr. Moses?

A. Yes, sir.

Q. Do you recall what compensation you received for appearing and testifying as a witness then, including your mileage and per diem?

A. No, sir, I couldn't tell you what the amount was right now. I have—they sent me a check for it, but I don't remember what it was.

Q. Can you tell us approximately?

A. Well, let's see.

Mr. Wilkey: Your Honor, we fail to see the materiality of this.

The Court: I anticipated that objection. What is the relevancy of his compensation?

Mr. Foreman: Just wanting to see, as an instance to what the defense claims is persecution, the expense to which the prosecution goes in bringing an immaterial witness from such a place.

The Court: I will sustain the objection. I will also instruct the jury not to consider the comment of counsel that this witness is immaterial. I will leave that matter entirely up to the jury to weigh the testimony of this witness.

Mr. Foreman: Then we offer it on the bias, interest, or animus of the witness.

The Court: How would it have any bearing on animus?

Mr. Foreman: It wouldn't have any unless the compensation is excessive.

The Court: I can't see why that is material.

Mr. Wilkey: Your Honor: the law provides the amount of mileage and compensation a witness must receive in Federal Court.

The Court: It does, and if I thought it were material in this case, I would charge the jury from the bench what it is, but I don't believe it is material.

Mr. Foreman: It may not be to this witness, but I say to the Court, it has been material to other witnesses in this case.

The Court: You mean what they pay in mileage?

Mr. Foreman: Yes, sir, and the daily compensation has been so discussed that witnesses have insisted on staying that we wanted excused, in order to draw the pay.

The Court: I don't think it is material, and I will instruct the jury not to consider what any witness may be paid in the way of pay and mileage for coming here to testify.

Mr. Foreman: That is all, Mr. Moses. Thank you.

The Court: You may step down.

Court will recess for about 20 minutes.

(Short recess.)

The Court: The Government may call its next witness.

Mr. Bottler: Prior to calling its next witness, the Government offers into evidence Government's Exhibit 150-A through 150-H, which is the subject of the stipulation previously filed.

The Court: Let me suggest, as proceedings in the future, in the interest of saving time, when it is known a matter of

this sort is to be offered, I think you can give it to defense counsel during recess, and it could have been examined.

Mr. Bottler: I will go ahead with the next witness.

1-236 JOE VAELLO,

a witness called in behalf of the Government herein, having been first duly sworn on oath, testified as follows, to-wit:

1-236 DIRECT EXAMINATION

Q. (By Mr. Bottler) Have you been sworn, sir?
A. Yes, I have.
Q. What is your name?
A. Joe Vaello.
Q. How do you spell your last name?
A. V-a-e-l-l-o.
Q. Where do you live?
A. In Benavides.
Q. How long have you lived in Benavides?
A. All my life.
Q. How old are you, sir?
A. Forty-four.
Q. What business or businesses do you engage in?
A. Oh, the banking business, also the lumber business.
Q. What is the name of your bank?
A. The Merchants Exchange Bank.
Q. What is your position in the bank?
A. I am the president.
Q. How long have you been president of the bank?
A. Since 19 — about 1947.

Q. Do you spend all your time at the bank? Are your duties split up between the lumber, construction, and banking activities?

A. Oh, I would say half of the time at the bank, and—

Q. All right. What is the name of the construction business or lumber business that you had in the years 1949 and 1950?

A. The Vaello Lumber Company and the Vaello Sales Company.

Q. Have you ever held any official position with the Benavides Independent School District?

A. Yes, I have.

Q. What position was that?

A. A board member.

Q. And a member of what board?

A. Of the Benavides Independent School District.

Q. When did you go on the Board of Trustees of the Benavides Independent School District?

A. In 1954.

Q. And about what date of 1954?

A. February 10.

Q. And when did you go off the board?

A. I am still a member of the board.

Q. All right, sir. Were you appointed or elected to the Board of Trustees of the Benavides Independent School District?

A. Appointed the first time.

Q. When did you first hear about a possible appointment to the Board of Trustees of the Benavides Independent School District?

A. Oh, approximately a week or ten days previous to February 10.

Q. All right. Now, who was present at the conversation when you heard about a possible appointment to the board?

A. Who was present?

Q. Yes.

A. George Parr and D. C. Chapa, and Dr. J. C. Gonzales.

Q. Where did this conversation take place?

A. In Benavides.

Q. And was anyone else besides those present?

A. No, sir.

Q. What time of day or night was that?

A. It was, oh, the early part of the night, I would say around eight o'clock.

Q. Do you see George Parr in the courtroom?

A. Yes, I do.

Q. Would you indicate which one of the persons in the courtroom he is?

A. He has the dark suit, right there about center. (Indicating.)

Q. All right. Does he have glasses on or not?

A. Yes.

Q. Starting with Mr. Foreman, how many is he?

A. Counting Mr. Foreman as the fourth, the fifth rather — I am sorry, he is the fifth.

Q. Is he standing up now?

A. That is correct.

Q. All right. Now, do you see Mr. D. C. Chapa in the courtroom?

Mr. Foreman: Stand up, Mr. Chapa.

A. Yes, I do.

Q. Were those two men the ones that you had a conversation with that evening, together with Dr. Gonzales?

A. Yes, sir.

Q. What was said at that conversation on the evening about a week or so before February 10, 1954?

Mr. Foreman: We object to this conversation, as to any and all of the defendants save and except Mr. Chapa and Mr. Parr, and save and except as to the first 19 counts in the indictment, as to all such other defendants.

Mr. Bottler: At this time, we will offer it only as to Mr. Parr and Mr. Chapa.

The Court: Very well. The jury is instructed that any testimony concerning conversations with defendants Parr and Chapa should be considered only as it relates to the cases against Parr and Chapa, and not against any of the other defendants.

Q. (By Mr. Bottler) All right, sir. What was said at that conversation?

A. Well, I learned that four of the trustees would be resigning in the next few days, and —

Q. Which four trustees?

A. The ones that lived in Benavides out of the seven. Do you want me to name them?

Q. Yes.

A. Octavio Saenz, Jesus Garza, Santiago Garcia, and Richard Barton.

Q. Now, what was said, after discussion was had concerning the resignation of the four members of the Board of Trustees of the Board of Benavides?

A. Well, that night, Dr. Gonzales was invited, I would say, to become a new trustee in the event those other trustees did resign.

Q. Who invited Dr. Gonzales to become a new trustee?
A. Well, either George Parr —

Mr. Foreman: I understood our objection goes to all this conversation without our renewing it on every question in regard to other defendants than Mr. Parr and Mr. Chapa?

The Court: The jury has been instructed conversations related to the testimony of the witness can be received only as evidence to Mr. Parr and Mr. Chapa, and should not be received as evidence as to any of the other defendants.

Mr. Foreman: In an abundance of precaution, I made that because under State practice, you have to object to each question each time it is asked.

The Court: The jury is further instructed relative to all of the testimony of this witness that relates to conversations had with the Defendants Parr and Chapa.

Q. (By Mr. Bottler) You may answer the question, sir. Do you recall it?
A. Will you please restate it.

Mr. Bottler: Would the reporter please read the question.

The Official Reporter (Reading): "Question: Who invited Dr. Gonzales to become a new trustee? Answer: Well, either George Parr—"

A. —or D. C. Chapa, one of the two.
Q. Were they both present?
A. Yes.
Q. Could everyone hear your conversation?
A. I am sorry. I didn't understand the question.
Q. Could everyone hear all of the conversation that took place, at the time you were all talking?

A. Oh, yes, the four of us.

Q. What did Mr. Gonzales say in reply to that invitation to become a trustee?

A. He said he would have to think about it, and would let him know in the next day or two.

Q. All right. Now, what, if anything, did George Parr and D. C. Chapa say to you?

A. Well, I was asked — I was told that the same thing had happened in the county, that several of the commissioners had resigned, and there was a possibility that the county judge may have to resign also.

Q. All right, and after you were informed of that, what else was said?

A. Well, they asked me if I had any interest in becoming county judge.

Q. By "they" who do you mean?

A. I mean Mr. Parr and Mr. Chapa.

Q. What did you tell them when they asked you if you had any interest in becoming county judge?

A. I declined the invitation. I told them I would not be interested in becoming county judge.

Q. Who was county judge at that time?

A. Dan Topin, Jr.

Q. Do you know Octavio Saenz?

A. Yes, I do.

Q. Is he present in the courtroom?

A. Yes, he is.

Q. Which one is he?

A. The second, standing.

Q. Do you know J. G. Garza?

A. Yes, that is Mr. Garza. (Indicating.)

Q. Standing up?

A. Yes, sir.

Q. Do you know Santiago Garcia?

A. Yes, I do. That is Santiago.

Q. Did you have any further conversations with either Mr. Chapa or Mr. Parr concerning the school board?

A. Yes, I did. A day or two after this meeting, I had a conversation with Mr. Chapa, D. C. Chapa.

Q. Was anyone else present?

A. Yes, Dr. Gonzales was with me.

Mr. Bottler: We will offer this conversation at this time as against the Defendant D. C. Chapa only.

The Court: Very well. I will instruct the jury that the testimony of this witness with respect to his conversation with the Defendant Chapa alone, or Chapa and Dr. Gonzales, shall be considered only as evidence against the Defendant D. C. Chapa.

Q. (By Mr. Bottler) What was said at the conversation the next day with D. C. Chapa?

A. Dr. Gonzales declined. He told Mr. Chapa that he had thought about it and talked with his wife, and he didn't feel that he should get involved in the school at that time.

Q. What was said after that?

A. Mr. Chapa asked me if I would consider it.

Q. What did you say to him, when he asked you if you would consider it?

A. I told him I would, that I would consider it.

Q. Consider what?

A. Being a trustee in the school district.

Q. Did you accept that invitation from Mr. D. C. Chapa to be a trustee at that time?

A. No, sir, not at that time.

Q. Did you have any further conversations concerning the trusteeship at the Benavides Independent School District?

A. Yes, once after that, a few days after that.

Q. All right, sir, who was present at that conversation?

A. Mr. Chapa and Mr. Parr.

Q. And where was it held?

A. At Mr. Chapa's ranch?

Q. At what time of day or night?

A. It was at night.

Q. About what time?

A. I would say approximately around eight o'clock.

Q. All right.

Mr. Bottler: We offer this as to the Defendants Chapa and Parr, this conversation.

The Court: Very well.

Q. And what was said at that conversation?

A. Well, I accepted the position, that is, I told them I would be willing to become a trustee upon the resignation of the other trustees on the board, and we also discussed the other three new board members.

Q. All right. Was there an agreement on who were to be the other three trustees?

A. Well, not exactly an agreement, but I mentioned three or four other names of business people I would like to see go on there with me.

Q. And what did they say to you, in response to your inquiry about those three or four other names?

A. They said they were perfectly all right.

Q. All right. Now, going back to the first conversation you had with D. C. Chapa and George Parr, was there

any discussion as to the reason for the trustees resigning from the school board?

A. I recall something was said, that they were resigning on the advice of their attorney.

Q. All right. Did they say who their attorney was?

A. Yes, Raymond — Manuel Raymond from Laredo.

Q. Do you know whether or not he has ever represented George Parr?

A. I believe he has. I believe I have read that he has represented him, I may be mistaken, but I think he has represented him.

Q. On what date were you appointed to be a trustee by the Benavides Independent School District?

A. On February 10.

Q. Of what year?

A. 1954.

Q. And where were you appointed?

A. At the school office.

Q. How did you know to come to the school office on February 10th?

A. Mr. Chapa called me one afternoon, and told me they were having a meeting and for me to collect the three other people, and for all four of us to be there.

Q. Did you go there?

A. Yes, sir.

Q. At what time?

A. Well, again I will have to guess. I would say about eight o'clock. It was early in the night.

Q. What happened when you got to the School District office?

A. Well, hey were having a trustee's meeting, and I

believe all of the trustees were there, also Mr. Raymond and another attorney.

Q. Do you know his name?

A. Oh, he's a son-in-law of Mr. Raymond. Mr. Victor Wood.

Q. What happened after you got there?

A. Well, we were called in the room that they were meeting in, and we were told that the four of the trustees would be resigning, and that the board was ready to talk to us and appoint us.

Q. All right, now, what members of the board from Benavides were present at that time?

A. At that time, Octavio Saenz, Santiago Garcia, Jesus Garza, and Richard Barton.

Q. Was the tax assessor-collector there?

A. Yes, he was.

Q. Who was that?

A. The tax assessor-collector was Mr. Chapa, D. C. Chapa.

Q. And was the secretary of the Benavides Independent School District there?

A. Yes.

Q. And who was that?

A. Oscar Carrillo.

Q. Do you see Oscar Carrillo here?

A. Yes, I do.

Q. Is he standing?

A. That is correct.

Q. What did the four Benavides trustees do that night, if anything?

A. They resigned. They resigned one at a time.

Q. Do you recall who was the first one to resign?

A. No, sir, I don't. I believe Mr. Barton was, but I'm not sure of that.

Q. Did anyone else resign a position at the Benavides Independent School District that night, February 10, 1954?

A. Yes, sir.

Q. Who else?

A. Mr. D. C. Chapa and Oscar Carrillo.

Q. What positions did they resign?

A. The position that Mr. Chapa had, tax assessor-collector, and Oscar Carrillo, secretary of the board.

Q. I will hand you Government's Exhibit 9, and ask you whether you have examined that document before? Would you check each page on that, please?

A. Yes, sir, I think I have.

Q. Do you know any of the names which appear on there? Are you familiar with any of the names?

A. No, I am not.

Q. Do you know any of the people whose names appear on Exhibit 9?

A. No, sir, I do not.

Q. Now, has your lumber and construction company ever done any work for the Benavides Independent Schools?

A. Yes, we have.

Q. What construction jobs have you had there since 1949?

A. 1949 we built a cafeteria building for the school.

Q. All right. I will hand you Government's Exhibit 24 and ask you if you can identify it?

A. Yes, I can.

Q. What is it?

A. Well, the first page is a breakdown of the payments that were received for that contract. The next two pages,

a copy of our bid, and I believe the final payment or estimate for final payment, or for the third payment anyway. That is the last page.

Q. Are those from your records of your construction company?

A. Yes, sir, they are.

Q. Do you keep your records correctly and currently?

A. Oh, yes.

Q. Is it part of your regular course of business to keep these records?

A. Yes.

Q. Were these records kept in the regular course of business?

A. Yes.

Mr. Bottler: We offer Government's Erhibit 24.

Mr. Foreman: May I, for the purpose of an objection, make and establish one of two facts?

The Court: Yes, you may.

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Q. (By Mr. Foreman) Mr. Vaello, when was this construction work done?

A. You mean the year, Mr. Foreman?

Q. Yes, sir.

A. The latter part of 1949 and the early part of 1950.

Q. And that likewise is when the correct estimate and worksheet was prepared?

A. Yes, sir, I believe so.

Mr. Foreman: Then, Your Honor, we object to the reception into evidence of Government's Exhibit 24, for the reason that it is too remote, for the reason that any act or conduct as to or prior, or any offense prior to September 1, 1951 would be barred by the limitation, and surely there is no showing that this Government witness was a party to any conspiracy, and for the reason that it has nothing to do, insofar as the allegations of the various 20 counts of this indictment, concerning which we object to this being received into evidence.

The Court: What says the Government?

Mr. Bottler: The Government says that this took place within the period of time set out in the indictment, that the Government is not limited in its proof as to either the conspiracy charge or the scheme and artifice charge in the mail fraud counts to matters which occurred from September 1, 1951 on, but under all the cases is admissible, that this is admissible, it is material to show that the work, certain work, was performed out at the Benavides Independent School District by this man's company.

Mr. Foreman: Pardon me, up to there we have no objection, but if there is anything further to be said, we suggest to the Court it be done at the bench or the jury be retired.

The Court: Very well. I will overrule the objection and Government's Exhibit 24 is admitted in evidence.

Mr. Foreman: I only made one objection to keep from confusing my bill.

The Court: Very well, objection overruled.

Mr. Foreman: I would like to make the same objection to Government's Exhibit 24 as to each of the defendants separately, and as to each count as to each defendant separately, and ask that the Government specify as to which defendants it offers this Government 24, and as to which counts in the indictment this is offered, as to being hearsay as to any of the defendants who are making these objections, and I make it on behalf of all of the defendants.

Mr. Bottler: Your Honor, the Government offers it against all defendants under all counts under which they are charged and tryable here. It is part of the business records, and under the Federal Rule—

The Court: It is admissible to all defendants and as to all counts in which each and every defendant is charged and tryable.

Q. (By Mr. Bottler) What construction job was this, again, what building?

A. A cafeteria.

Q. And where was the cafeteria erected or built?

A. In Benavides, right in the school grounds.

Q. On the school grounds there?

A. Yes.

Q. And when did you commence construction of the cafeteria?

A. Oh, well—I don't believe this record shows. The sheet was dated September 22, 1949, and some of our estimates here are November in 1949 and January, 1950.

Mr. Foreman: Your Honor, the witness obviously—we object to his being led by the exhibit and testifying from the exhibit. The exhibit is in evidence and therefore speaks

for itself. We object to his holding it in his hand and reading from it, establishing dates, and testifying what was done by reading from the exhibit. We ask that he limit his interrogation and answers to the witness' recollection.

The Court: That is a proper suggestion, unless it can be shown that the witness is testifying from notes made by himself.

Mr. Bottler: Yes, sir.

Mr. Foreman: May it please the Court, part of it is typewritten.

The Court: Well, I said unless it can be shown that he is testifying from notes he made himself. He may have made notes on the typewriter. Some people do. I don't know what the situation is. I was simply making a ruling.

Mr. Bottler: All right, Your Honor. We will approach it without the exhibit at this time.

From your independent memory, approximately when did you commence the construction of the cafeteria out there on the school grounds at Benavides?

A. I believe it was during the last quarter of the year 1949, September, October, or perhaps sometime in October.

Q. And when was it completed?

A. Oh, I believe it was March, February or March.

Q. All right. Now, what duties did you have with the construction—this construction company with respect to this cafeteria job with the school grounds?

A. Well, I did most of the office work. Of Course,

there is a clerk in the office. I supervised that, and I did inspect the work itself, oh, once a day.

Q. All right. Were you out there necessarily every working day during the time, the months it was being constructed?

A. Oh—

Mr. Foreman: I object to that form as being leading and suggestive.

Mr. Bottler: Withdraw the question.

The Court: All right. Objection sustained.

Q. (By Mr. Bottler) Now, would you describe to the jury the location of the Benavides Independent School buildings on that lot out there at Benavides?

A. Well, we have a high school building, which is on the west side of the plot, or the school grounds, and then we have two other buildings for the elementary department, a gymnasium, and the cafeteria building was placed between the high school and the elementary department.

Q. Now, are all of the buildings located on one plot of ground of the Benavides school system, or are they scattered throughout the city?

A. No, sir, they are on one plot, one area.

Q. How often were you out there on the construction job when it was being accomplished?

A. Usually at least once a day.

Q. Were you ever out there more than once a day?

A. Yes, sometimes I would be there several times a day.

Q. All right. Now, did you ever have any other construction out there at the school district done by your company after the completion of the cafeteria?

A. Yes, sir, we did another building, a band hall building.

Q. All right. I hand you Government's Exhibit 25, and ask you if you can identify it?

A. Yes, I can.

Q. What is Government's Exhibit 25?

A. The first page is a record of the payments we received, and our letter of bid, and our estimates.

Mr. Foreman: May it please the Court, can the time be established so as to enable me to make an objection to the testimony?

Q. When was this building being constructed out at the Benavides school grounds?

A. Some time in June. The work must have started sometime in June.

Q. Of what year?

A. 1950.

Q. All right.

Mr. Foreman: We interpose the same objection as to remoteness as we did with reference to Government's Exhibit 24.

The Court: Objection overruled.

Mr. Foreman: We make the same objection with reference to the various defendants, as to each defendant and as to each count with reference to its being received, and ask that the Government stipulate as to which count and as to which defendants it offers the Government's Exhibit 25, and then as to these, we object to its being offered as to each.

The Court: Has it been offered?

Mr. Bottler: It has not been offered as yet, Your Honor.

The Court: Very well, you may continue.

Q. (By Mr. Bottler) Is Government's Exhibit 24 taken from the records of your construction company?

A. Did you say 24?

Q. 25

A. Yes, sir, it has been.

Q. Were these records part of your records kept in the regular course of business?

A. Yes, they are.

Q. You keep these records correctly and currently?

A. Yes.

Q. As part of your regular course of business, you did keep these records?

A. Yes, we did.

Mr. Bottler: The Government offers Government's Exhibit 25 as to all of the defendants, as to all counts on which the defendants are charged and tryable.

Mr. Foreman: And each defendant as to each count interposes an objection to its being received as to the several defendants.

The Court: Very well, the objection is overruled and Government's Exhibit 25 is admitted in evidence as offered.

Q. (By Mr. Bottler) What did you do on this band hall job?

A. Well, practically the same thing as the cafeteria building.

Q. All right. Now, when you are on the school grounds at Benavides, can you see all the school buildings there?

A. Yes, you can.

Q. All right. Now on the cafeteria and band hall jobs, I will ask you, who paid the contractors?

A. We did. Our company did.

Q. Was that what is known as the turn-key job or not?

A. Yes, it is.

Q. Did you authorize the school board to pay any subcontractors or persons other than yourself for the work on those two jobs?

Mr. Foreman: May it please the Court, we object to that question as being argumentative as this man has no authority. The Board of Trustees would have the sole authority as to the management of the funds. At that time, this man was not a member of the board until February of 1954. He is asking if this man gave his superiors his permission to do something, and their peculiar prerogative to do, and something he would not be called upon, and it is supposing to the jury something they might have been doing would have been contrary to the authority of the contractor.

Mr. Bottler: I withdraw the question.

Did you pay your subcontractors, or did the Benavides Independent School District pay your subcontractors on this job?

A. We paid our own subcontractors.

Q. All right. Now, with reference to some specific items, when were the sidewalks installed at the Benavides Independent School District on the Benavides schools?

A. The sidewalks, with the exception of the connecting parts that we made, I believe most of these—all of these sidewalks had been there for many years.

Mr. Foreman: I am having difficulty hearing the witness. He has a very soft voice. May I ask the Court to ask him to speak louder?

The Court: Very well, sir. Will you speak a little louder, please. Clearly and distinctly, so everyone in the courtroom can hear you?

Q. (By Mr. Bottler) What is a turn-key job?

A. Initially what is meant by a turn-key job, is any job that payment is received for a certain sum, and everything is paid by the contractor.

Q. Allright. Now, with reference to these sidewalks, you said that all of the sidewalks had been built for many years except for connections, and the connections to what buildings?

A. We built the sidewalks connecting into the old sidewalks. These sidewalks were there before we started construction on our buildings.

Q. All right. Now, were the sidewalks that were there previously, had been there many years prior to 1949?

A. That is correct, yes, sir.

Q. Now, have you had occasion, as a member of the school board, to make an inspection or inspections of the school grounds since the time that you worked on these two buildings, the band hall and the cafeteria?

A. Yes, sir, I have.

Q. Has there been any construction work of new buildings since the erection of the band hall and the cafeteria out there?

A. No, sir, there has not been.

Q. All right. Now, do you have a science hall at the Benavides school?

A. No, we do not. We have a science room in the high school building.

Q. How long has the science room been there in the high school building?

A. Well, it has been there since that building was built.

Q. And when was it built?

A. Many years ago.

Q. Was it before or after World War II?

A. Before.

Q. Is there a laboratory building on the Benavides school grounds?

A. No, sir, not to my knowledge.

Q. Is there a shed for the manual training department out there at the Benavides school?

A. There is a building that was used before the war for that. It has been converted to a garage building now.

Q. All right, and when was it built?

A. Many years before the war.

Q. All right. Have you had a manual training department since World War II?

A. No, sir, we have not.

Q. Do you have hardwood floors or yellow pine floors at the Benavides school?

A. Mostly it is yellow pine.

Q. Do you have any hardwood floors?

A. I believe the superintendent's office has hardwood floors. It is small section.

Q. In what building is that located?

A. That is in the high school building.

Q. Was that built before or after World War II?

A. No, I believe that was built—I really don't know.

Q. Was it built prior to the time or after the time that you commenced work on the cafeteria building?

A. Prior.

Q. It was before 1949?

A. I believe so, yes, sir.

Q. Who did the foundation work for the new construction you put in there in 1949 and 1950?

A. We did.

Q. What kind of fence or enclosure do you have around the Benavides Independent Schools?

A. Well, we have at the present time, we have a simple fence. It is made out of pipe.

Q. All right, now, has that fence been replaced recently? Is that a new fence?

A. Not that I know of, no, sir.

Q. All right. Now, is there a building for band instruments and uniforms apart from the band hall you built?

A. Not that I know of, no, sir.

Q. Well, as a member of the Board of Trustees, would you know if there was such a building?

A. Yes, I would.

Q. Is there?

A. No, sir.

Q. Is there a sprinkler system on a football field out there?

A. No, we don't have what I would say a sprinkler system. We use an overhead irrigation.

Q. All right. Are you familiar with the science room at the Benavides school?

A. Yes, sir.

Q. I will hand you what has been marked as Government's Exhibit 26, and ask you if you can identify it?

A. This is the room we use for our science, the science room we call it. It is a classroom.

Mr. Foreman: What is the number of that?

Mr. Bottler: 26. We offer Government's Exhibit 26.

Mr. Foreman: We have no objection to this, Your Honor. We think it ought to be more properly authenticated, but even so, we don't object.

The Court: You mean authenticated or identified?

Mr. Foreman: Yes, I used the words interchangeably, Your Honor.

The Court: Yes.

Mr. Foreman: As to who made it and as to when.

The Court: If you want this more accurately identified, you may do it on cross examination.

Mr. Foreman: I don't think it is too important.

The Court: Government's Exhibit 26 is admitted in evidence.

Q. (By Mr. Bottler) I will hand you Government's Exhibit 10, and refer you to the second page thereof, and if you will look at the first item on there, check No. 26340 payable to Antonio L. Mendoza for plastering contract and millwork, showing the date November 5, 1949, for $563.50, and I will ask you—

Mr. Foreman: What is the date of that?

Mr. Bottler: November 5, 1949.

Q. —whether Antonio Mendoza was working for you out there on the construction of the cafeteria which was being built then?

A. No, sir, he was not.

Q. Was there any construction work going on out there other than the construction work performed by your company on the cafeteria?

A. Not to my knowledge. I didn't see any.

Q. Check No. 26341, the next item, the date of the check November 7, 1949, to A. G. Rodarte. It shows it is for tile floor contract in restrooms, for $622.65. Did A. G. Rodarte do any work for you in November of 1949 on the cafeteria?

A. No, sir.

Q. Are you aware of any construction work involving any restrooms out there in November of 1949?

A. No, sir, I don't know of any.

Q. Incidentally, what is the—what building or type of buildings are the restroom facilities contained in in the Benavides schools?

A. They are all outside. They are in a separate building.

Q. All right, and when were those buildings built?

A. Before the war. Many years ago.

Q. And are the same facilities in there now as when they were built?

A. I believe so, yes, sir.

Q. The next check is No. 26342, the date of the voucher November 8, 1949, to Manuel M. Corona, sidewalk contract, school to the library, date paid November 22, 1949, for $883.80.

Mr. Foreman: Would you give the number of the voucher again?

Mr. Bottler: 26342.

Q. I will ask you, do you have a library at the Benavides school, a library building?

A. .No, we do not.

Q. Were there any sidewalks going from the school to a library?

A. No, there are not.

Q. Was there anyone installing sidewalks in November of 1949, other than the sidewalk you installed connecting to the cafeteria building?

A. Not to my knowledge, no, sir.

Q. Would you have known if such construction had taken place?

A. I think so, yes.

Q. All right, sir. The next item is check No. 26343 dated November 9, 1949 payable to G. R. Roldan for truck hire and building materials, paid November 22, 1949 for $472.60. Did you hire or have a G. R. Roldan working for you out there?

A. No, sir.

Q. Did you pay anyone by the name of G. R. Roldan for truck hire or building materials?

A. No, sir.

Q. Did you see any building materials being taken out to the Benavides building site for other than the building you were building in November, 1949?

A. No, sir, I don't recall any.

Q. The next item is check No. 26415 payable to Inez Dimas for an excavation contract, date paid November 25, 1949, for $673.50. I will ask you who did the excavation on this cafeteria building out there in 1949?

A. We did. Our company does that work.

Q. Did you pay for it?

A. Yes, sir.

Q. Do you know Inez Dimas?

A. No, sir, I don't know this man.

Q. Was there any other excavation work going on out there at the school grounds in 1949?

A. No, sir.

Q. The next item is check No. 26416, date issued November 5, 1949 to A. Sanchez for grounds leveling contract, date paid November 25, 1949, for $75. Was anyone out at the school grounds doing any ground leveling other than your own conseruction company?

A. I don't recall seeing any.

Mr. Foreman: May it please the Court, may we renew at this time our objection to all testimony from this witness to Government's Exhibit 10, the date as having been established up to now all in the month of November 1949, as being too remote. I think it has been barred by limitation, anything as before September 1, 1951, and we ask that the jury be instructed not to consider that, and that it be limited both as to its purpose, as to what purpose it is admitted, and as to the defendants it is admitted as to, and as to what counts it is offered.

The Court: Objection overruled.

Q. What was your answer?

A. I didn't see any. I just didn't notice any ground leveling.

Q. The next item is check No. 26417 dated November 7, 1949, to B. Gonzales, Jr., millwork contract dated November 25, 1949, for $575.80. I will ask you, who did the millwork on this construction job out there?

A. We did.

Q. Did B. Gonzalez, Jr. do it?

A. No, sir.

Q. The next item is check No. 26418 dated November 23, 1949, to Alfonzo Gonzalez for a painting contract, November 25, 1949, for $365.00. I will ask you who did the painting work on that building out there?

A. We did.

Q. Did you have an Alfonzo Gonzalez working for you, doing painting there?

A. No, sir.

Q. The next item is check No. 26419 dated November 8, 1949 to Lorenzo G. Elizando for a roofing contract, date paid November 25, 1949, in the amount of $758.50. Who did the roofing on the building that was being constructed out there in November of 1949?

A. Well, subcontractors,

Q. Was that Lorenzo G. Elizando?

A. No, sir.

Q. Who paid your subcontractor?

A. We did.

Q. Did you see any other roofing work going on out there while you were there in November?

A. I don't recall seeing any of it.

Q. The next check is 26420 dated November 9, 1949, payable to Cosme Leal for an electrical contract, date paid November 25, 1949 for $635.60. Who did the electrical work on that cafeteria building?

A. Our own subcontractor.

Q. And who did pay your electrical subcontractor?

A. We did.

Q. I will ask you to look at the rest of the checks which appear, the names which appear there and the items for which they were purportedly paid, and I ask you if there is any of the work that appears there that was

done out at the Benavides school in November and December?

Mr. Foreman: What page are you directing his attention to?

Mr. Bottler: Page 2,—in January, February and March when you were building the cafeteria out there, work that was done except by people who were working for the Vaello Sales Company?

A. I don't know of any of these people or any of this work, Mr. Bottler.

Q. All right. Now, sir, how large a town is Benavides?

A. About 3000.

Q. How large is Freer, Texas?

A. Freer?

Q. Yes.

A. I would say it is a little larger than Benavides, 3500 to 4000.

Q. Where are the public schools which are run by the Benavides Independent School District?

A. In Benavides and Freer.

Q. Are there any public schools which are run by this Benavides Independent School District, or were run in the years 1949 through 1954 other than these schools at Benavides and Freer?

A. Not to my knowledge, no, sir.

Q. Approximately how many pupils are there in the Benavides school?

A. About 1000.

Q. Approximately how many in Freer school?

A. About the same number, or a few more. Say 40 or 50 more.

Mr. Foreman: Who has 40 or 50 more?

A. That is Freer that has. They have.

Q. Are there any large towns or cities in the Benavides Independent School District other than Benavides and Freer?

A. No, sir.

Q. Is San Diego in the BISD?

A. No, sir, it is not.

Q. Does the defendant, George Parr, live within the Benavides Independent School District?

A. You mean Mr. Parr? No, sir, he does not.

Q. Where does he live?

A. In San Diego.

Q. All right. Do you know C. G. Ramirez?

A. C. G. Ramirez? Yes, I do.

Q. I believe you stated you know Santiago Garcia?

A. That is right.

Q. What relationship, if any, is there between Ramirez and Garcia?

A. Santiago is his son?

Q. Was C. G. Ramirez on the board of the Benavides Independent School District at one time?

A. Yes.

Mr. Foreman: We object to that as attempting to charge a son with the alleged acts of his father, who was a member of the school board at the time, attempting to impute to the son because his father was on the school during this time. We think that is immaterial.

The Court: That hasn't been brought out yet. What is the purpose of the interrogation, Mr. Bottler?

Mr. Bottler: Well, it is just to develop the seating of the school board. We intend to show that when C. G.

Ramirez, the father, retired from the school board, his son, Santiago Garcia, was appointed to take his place.

The Court: Is it material?

Mr. Wilkey: Yes, Your Honor, it is material because the name in which the check for the alleged fictitious work was issued is in the name of Maria Elva Garcia, the daughter of Santiago Garcia, and that continued over a period of time, whether C. G. Ramirez was on the board or the son.

The Court: I understand about the daughter, but I am thinking about the father. Why is that material?

Mr. Wilkey: Because the fictitious checks were issued during the time Ramirez was on the board in the name of his granddaughter, or in the name of the daughter of Garcia, and the evidence will show later on who received these checks during all of the time either Ramirez or Garcia was on the board.

Mr. Foreman: May I suggest to the Court, the prosecution hasn't proved at any time, as far as I can recall, that any check ever went to either this daughter about which he now protesteth, and furthermore I point out the fact that C. G. Ramirez is not sitting as a defendant, and not named as a defendant in the indictment, and therefore to prove that a man who came on the board after all of the conduct complained of and relied on by the government as a suggested wrongdoing on the part of this man was actually done while the father was on the board and is an attempt to punish one many for another man's wrongs.

The Court: I haven't clear in my mind why the Government wants to go into matters that did occur before these members or this member was on the board. I want to understand before I can rule.

Mr. Wilkey: Evidence later on, Your Honor, will show to whom the check made in the name of Maria Elva Garcia was given, and the relationship between C. G. Ramirez, who was on the board for part of the time covered by the indictment, and Garcia—

The Court: The relationship has been proven. What else do you want to prove by this witness?

Mr. Bottler: We are just going to ask him who succeeded to C. G. Ramirez's position when he resigned as trustee.

The Court: That will be permitted.

Mr. Foreman: Up until now, until the Court required proof, the inference was that this wrongdoing should be attributed to Santiago Garcia because his father was on the board at that time.

The Court: I know of no such inference except remarks of counsel, and I will instruct the jury not to consider any such inference. The purpose is to show the relationship, and that one did succeed another. I don't know what the proof will be, but I will permit that.

Q. (By Mr. Bottler) Who succeeded C. G. Ramirez to his position on the Board of Trustees?

A. It is my understanding his son did, Santiago.

Q. All right. Now, at the time when you were appointed to the board on February 10, was George Parr a trustee of the Benavides Independent School District?

A. No.

Q. Did he hold any official position with the Benavides Independent School District?

A. No, I don't think he did.

Q. In your work at the bank, have you become familiar with the signature of Octavio Saenz?

A. Yes, I think I can identify it.

Q. I will hand you Government's Exhibit 2, and referring to the last page of Government's Exhibit 2, I will ask you to examine the purported signature of Octavio Saenz and tell us whether you can identify it?

A. Yes, sir, I think that is his signature.

Q. All right. I will show you Government's Exhibit 2 and refer you to the last page thereof and the purported signature of O. Saenz which appears there, and ask you if you can tell us whose signature that is?

A. I believe this is Octavio Saenz.

Mr. Foreman: Pardon me, you just referred to the other one as 2.

Mr. Bottler: I stand corrected. The first one I showed him was Government's Exhibit 1.

Mr. Foreman: We renew our objection because that is a period ending August 31, 1950, and renew it as to the period August 31, both of which are beyond the period.

The Court: Objection overruled.

Q. (By Mr. Bottler) I will show you Government's Exhibit 4 and direct your attention to the last page thereon, to the purported signature of O. Saenz, and ask you if you can identify whose signature that is?

A. I believe that is his signature, yes.

Q. All right. I will hand you what has been marked for identification as Government's Exhibit 108, and refer you to the purported signature of O. Saenz, and ask you if you can tell us whose signature this is?

A. It is Mr. Saenz again.

Q. All right. Are you familiar with the signature of Oscar Carrillo?

A. Yes, I think I am.

Q. I will refer you to the purported signature of Oscar Carrillo, Sr., which appears on Government's Exhibit 108, and ask if you can tell us whose signature that is?

A. Oscar Carrillo, Sr.

Q. I will show you what has been identified as Government's Exhibit 107, and ask you if you can identify the purported signature of O. Saenz?

A. Yes.

Q. Whose signature is it?

A. Octavio Saenz.

Q. I will ask you if you can identify the purported signature of O. Carrillo, Sr.?

A. Yes.

Q. Whose signature is that?

A. Oscar Carrillo, Sr.

Q. I will show you what has been marked for identification as Government's Exhibit 109-A and ask you if you can identify the purported signature of O. Saenz?

A. Yes, I can.

Q. Whose signature is it?

A. Octavio Saenz.

Q. I will ask you to examine the purported signature of O. Carrillo, Sr.?

A. Yes.

Q. Can you identify it?

A. Yes.

Q. Whose is it?

A. Oscar Carrillo.

Q. Now, I will ask you if you know of any relationship which might exist between Oscar Carrillo, O. P. Carrillo, and D. C. Chapa?

A. Yes, sir.

Q. What relationship, if any, exists between those individuals?

A. O. P. and Oscar are sons of D. C. Chapa.

Q. All right. Do you know what the D. C. stands for in D. C. Chapa?

A. Yes, I do.

Q. What is it?

A. David Carrillo.

Q. Where does D. C. Chapa live?

A. He lives in Benavides.

Q. And how long has he lived there?

A. As long as I have known him.

Q. All right. Do you know Tom Donald?

A. Tom Donald, yes, sir.

Q. Do you know where he lives?

A. Yes.

Q. Where did he live during the years 1949 to 1954?

A. In Alice.

Q. Do you know where Jesus Garza lived in the years 1949 through 1954?

A. Yes, sir.

Q. Where did he live?

A. Benavides.

Q. Do you know where Santiago Garcia lived between 1949 and 1954?

A. Yes.

Q. Where?

A. Benavides.

Q. Do you know where Jesus Oliveira?

A. Yes, he lives in Benavides also.

Q. Do you see him here?

A. Yes.

Q. Which one is he?

A. The third from the left. (Indicating.) That is the gentleman.

Q. Was he living in Benavides in the years 1949 through 1954?

A. Yes.

Q. Where was Octavio Saenz living in those years?

A. In Benavides.

Q. Where was Oscar Carrillo living?

A. In Benavides.

Q. I will hand you what has been marked for identification as Government's Exhibit 27, and ask you to go through this exhibit and examine the purported signatures which appear on this exhibit for Octavio Saenz and Oscar Carrillo, Sr. Will you examine all of them please?

(Short interval.)

Have you looked at all the purported signatures of Octavio Seanz and O. P. Carrillo, Sr.?

A. Yes, I have.

Q. Can you identify those signatures as they appear in Government's Exhibit 27?

A. Yes, they are the signatures of Octavio Saenz and Oscar Carrillo, Sr.

Q. All right.

Has any construction work been done on the Benavides schools since the time you completed the band hall, any new construction?

A. Not to my knowledge, with the exception of perhaps some repair jobs.

Mr. Foreman: Let me see 27 please.

Mr. Bottler: Your Honor, may I have a minute?

The Court: Are we near the end of direct examination?

Mr. Bottler: Yes, we are.

The Court: Very well, sir. I suggest we finish it if we can.

Q. (By Mr. Bottler) What playground equipment did you have out at the Benavides schools?

A. Well, the usual playground you find in schools, swings and that sort of thing. That is outside equipment.

Q. That is what I mean, on the outside. How long had those installations been there?

A. I really don't know. We have always had that type of equipment there.

Q. Do you remember it being there before the war, World War II?

A. Yes.

Mr. Foreman: Your Honor: we object to the form of that, not to the testimony itself, but it suggests a time they desire to establish, and we object to the leading and suggestive nature of the question.

The Court: I suggest that counsel refrain from leading the witness.

Q. Do you have a — strike that. Do you have drapery and stage equipment, and an auditorium in the school there?

A. Drapery and stage equipment, yes, we do.

Q. When was it replaced, if ever?

A. It was replaced about the first year after I became a member. It must have been in 1954 or 1955.

Q. And what was the age of that equipment? Was it old or new?

Mr. Foreman: If it please the Court, that calls for conjecture and conclusion in a field in which this man is not qualified as an expert, calls for hearsay and a conclusion.

The Court: Well, that depends on the source of his knowledge. If he remembers when that equipment was put in there, it wouldn't call for a conclusion.

Mr. Foreman: If it please the Court, the witness has testified he did not go into office until February of 1954, and it was replaced —

The Court: As a citizen, he may have known even though not a member of the board, and I don't know whether this witness knows or not. I am unable to rule.

Mr. Foreman: Then I object because it has not been established he knows.

The Court: That objection is sustained.

Q. (By Mr. Bottler) All right. Did you have occasion to look at the drapery and stage equipment, as a member of the Board of Trustees, prior to the time it was replaced a year after you went on the board?

A. Yes, sir, I did.

Q. What did it look like?

Mr. Foreman: The same objection we have heretofore objected. Your Honor, that he is asking for a conclusion in a field in which the party has no knowledge.

The Court: What is the purpose of the interrogation?

Mr. Bottler: Well, Your Honor, according to the annual reports, there would have appeared to have been 700 —

Mr. Foreman: Just a moment. Pardon me. This is prejudicial, and we ask that it be done at the Bench, or out of the presence and hearing of the jury.

The Court: Well, it is five o'clock. I am going to excuse the jury. The jury is reminded of the instructions previously given. The jury is excused until 9:30 tomorrow morning.

(The following proceedings were held out of the presence and hearing of the jury.)

The Court: Now that the jury has retired, would you state what you want to prove, and you can even state what the testimony of the witness may be, or have the witness testify and then maybe I can rule whether the jury should hear it or not. I don't know what it may be, or what its relevancy is.

Mr. Bottler: All right, Your Honor.

On page — there is a page on Exhibit 10 where there is an item of drapery and stage equipment for an auditorium installation, and made for $705.95, paid in 1951. This drapery and stage equipment was replaced in 1955, and I am asking this man merely to describe the appearance of the old drapery, or of the old drapery and stage equipment.

The Court: You mean as to whether it is green or blue or red, or whether old or new?

Mr. Bottler: Whether old or tattered.

The Court: Ask him. I want to hear what his testimony may be, and maybe I will be in better position to rule on it.

Q. (By Mr. Bottler) What was the appearance of the old stage drapery there?

A. In a very poor condition. It looked rather old.

Q. Do you know when those draperies had been installed prior to the time you replaced them in 1954 or 1955?

A. No sir, I do not.

Mr. Foreman: We object, Your Honor, for the reason his testimony calls for expert testimony in a field in which he is not qualified, and it is a conclusion.

The Court: Well, I don't think one would have to be an expert to say something was old or new. I think a mature man in possession of his faculties would know whether draperies were old or new, but I still don't know its relevancy to this case.

Mr. Bottler: Your Honor, if the drapery was old, then it wasn't purchased in 1951, only four years before they had to replace the draperies.

The Court: I don't know that we could conclude that. They may have had hard use in four or five years, with children hanging on them. They could become old. I am inclined to agree with defense counsel that possibly it is conclusion evidence.

Mr. Foreman: May it please the Court, as to the relevancy of this, whether it is relevant or not, the use for three years is old. A woman may figure she has worn a hat twice and it is old, and another one might think it is old in ten years.

The Court: You have been married long enough to know that.

Mr. Foreman: The same thing with household furniture. I have had enough experience with that, and other people's tribulations to know that.

The Court: If I could know how the proof, what the age of the draperies is, would have bearing on this case and the proof of the guilt or innocence of the defendants, I could be helped.

Mr. Bottler: Perhaps I can ask it out of the presence of the jury.

The Court: All of this is out of the presence of the jury.

Q. (By Mr. Bottler) Did these draperies appear to be a few years old, or how old did they appear to be?

A. They appeared as if they had been there since that building was built, 20 years or 15 or 25 years ago.

Mr. Foreman: That again, we submit, Your Honor, is a conclusion peculiar —

The Court: I think it would be.

Mr. Foreman: To a banker, something might look old and obsolete, and to some of the laborers on the jury, it might be the finest available in Houston.

The Court: I will sustain the objection. Is there anything further?

Mr. Bottler: Oh, yes, Your Honor. I believe that since defense counsel has asked that witnesses not be excused in the presence of the jury, that it would be appropriate at the end of the day, in order to save expense —

Mr. Foreman: We have already done that. That is what I was doing while I should have been paying attention to this witness. We have agreed all of the postmasters may be excused, to help save the Government being reprimanded for the excessive expense of its case.

The Court: Are they subject to recall?

Mr. Foreman: I would like for that understanding to be, and they would return at the expense of the Government.

The Court: Should they return at the expense of the Government, if the defendant has had full opportunity of cross examination? If the defendants want them to prove the defendant's case, why should they be returned at the expense of the Government?

Mr. Foreman: They shouldn't, and on the other hand, I withdraw my agreement to excuse them and ask that they be kept here. I have to work this from a managerial standpoint as well as legal, and I am advised in that connection by Mr. Bottler, the two people Abel and whatever Abel's wife's name is, Yzaguerres, whom I asked about at the opening session, were paid by the Government to come up here and paid back, like other witnesses, and for that reason I again renew my request we be furnished these people at the Government's expense, as distinguished at our expense.

Mr. Wilkey: Your Honor, we thought that since a mistake had been made in our office, and a letter, along with

the 70 other letters, written to the Yzaguerres, which caused them to come up here, the least we could do is pay their expenses up and back.

The Court: I believe that is proper, and if you think it was a mistake they were called up, I think it was not only proper to pay them for coming, but to pay them for going home.

Mr. Bottler: I was about to state, before Mr. Foreman interrupted me, we had decided at the end of each day which witnesses might be excused.

The Court: I am not going to keep all of the witnesses here to the end of the trial of this case, because someone — for instance, I am not going to keep all of the postmasters here who have been called to testify, and then cross examined.

Mr. Foreman: I don't think we would recall them, Your Honor, but I don't know. I already have thought of ten or twelve or fifteen question I would like to ask Mr. O'Connor, would have asked him if he had been here.

The Court: Mr. O'Connor was excused with the understanding he would return on reasonable notice.

Mr. Foreman: Return at the expense of the Government. I don't know the practice of procedure in Federal Court as to the excusing of witnesses. I am sure it is within the discretion of the Court, but we are not, unless we can agree that any witnesses would be returned at the expense of the Government, we do not want to waive any rights we have by being of record as excusing any witnesses at

all. I know that the last time I had to, I regretted it as to several witnesses, and you can't think of all those things at one time. They come to you in the nighttime, or on the way to the court house the next morning, therefore if you speak hastily and forfeit your right through excusing a witness, you cannot then call him back. As to whatever the Court does, it is the Court's prerogative and not ours to reason why, or judge, but we don't want to be, for the record, in the position of excusing any witness who is here now as a witness in this case, if we are going to be put to the expense of bringing him back. We would rather he would remain here, and whatever the Court does, we know will be whatever the Court thinks is right.

Mr. Wilkey: May we point out two fundamental things in regard to whether or not witnesses should be excused. First of all, it is the Court's prerogative to do so, and the Court has before it the facts as to expense and so on.

The Court: Yes, that is so, and I would rather have an agreement of counsel, and if I cannot have an agreement of counsel, I will have to decide in each case what I think is proper.

Mr. Wilkey: On the second thing, the way trials are conducted, after the defense has made its last question for cross examination and the witness left the stand, the defense, until it has its chance to put on its testimony, has no right whatsoever to request a witness be recalled. That only occurs when the defense puts on its testimony. Mr. Foreman has stated he has thought of several things to ask Mr. O'Connor.

Mr. Foreman: I think that is not —

The Court: I want him to finish what he is saying.

Mr. Wilkey: It is my belief, if Mr. O'Connor were out here tonight, Mr. Foreman would have no right to recall him until such time as Mr. Foreman's case is presented. Mr. O'Connor has left and will not be an expense sitting around, and he will not be an expense of the State because he will be at his work in Austin. I think that applies to all these witnesses, that Mr. Foreman has no right to recall them until he puts on his case.

Mr. Foreman: All of which all of us, even the bailiff and the reporter knows, and he didn't need ten minutes of expostulation to have explained to us.

The Court: That is the Rule, and I will say this, if the Government calls a John Doe as a witness, and the defense finishes its cross examination of Mr. Doe, if the defendant has something it wants to develop defensively, I am going to permit the defendant to do that while the witness is on the stand because this does promise to be a protracted trial, and I think it would be in the best interest of the trial altogether, and the convenience of the witnesses to be here and testify once, rather than having to come back great distances.

Now, what do parties think of that plan?

Mr. Foreman: Your Honor, I think it would be very unfair to the defense to start countermanding by a witness in advance testimony —

The Court: Very well. I will not require you to do that.

Mr. Foreman: It would show a guilty knowledge, and therefore would be the very thing to convict, if I were on

a jury and he starts denying something he has not been accused of.

The Court: Very well. I simply stated you could do it.

Mr. Foreman: What counsel has said about putting the man back on, I knew he couldn't be put on, but I am sorry he didn't understand when I spoke so, through my years of practice at the bar, about all of us knowing. I had said something that had given him the right to believe I might have thought I could put him on out of order.

The Court: This does promise to be a protracted trial, and I will not permit witnesses who appear and testify to remain for days and weeks in the hall with the possibility that someone may want to recall them.

Mr. Foreman: Your Honor, there are some five or six Government witnesses here, who will be affirmative witnesses for the defense, if certain witnesses testify for the Government. There will be about five or six such witnesses, whose names I already have, and there may be others.

Mr. Wilkey: May I suggest this, that counsel for defense furnish the Court the names of the five or six Government witnesses which he thinks, if the Government's case goes like it did last time, will be called for the defense, and then maybe we can work out an agreement on whether those witnesses stay or go, or come, and at whose expense, and we can dispense with the rest of the witnesses.

Mr. Foreman: Your Honor, I don't attribute the inference I am about to make in relation to Mr. Wilkey or Mr. Bottler, but each and every time we have indicated a

witness we are going to use, in State or Federal Court, growing out of this Duval situation, immediately some or more, if it were in the State Court District Attorney Sam Burris — in the Federal Court, Sam Burris has gone and talked to the witnesses we indicated we were going to use, even as far as San Antone in State Court, the federal employees have. We have no reason to reveal now to the Government our strategy, and have these witnesses interrogated as to what we may be planning to establish by them. We don't feel we should be required to designate these witnesses. When we present our case —

The Court: How many witnesses were sworn at the beginning of the trial yesterday?

The Clerk: Twenty-three.

The Court: Twenty-three witnesses were sworn yesterday, and yesterday afternoon at about three o'clock — this is Tuesday afternoon at 5:15, and to this date ten have given their testimony in full, and the witness, Mr. Vaello, who is now on the witness stand, has given part of his testimony. I would roughly say he is half through, so we have heard ten and one half witnesses. I am not going to require all witnesses to remain in the hall throughout the trial of this case, which may last for several weeks.

I said earlier, I was hoping counsel could agree, but if they can't, I will announce the policy of the Court, and that is, when a witness has been called and examined, and cross examined, and excused, I am going to let him go home instead of spending weeks in the halls of the court house.

Is there anything further? If not, court is adjourned until 9:30 tomorrow morning.

TRANSCRIPT OF PROCEEDINGS

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2-295 MORNING SESSION—MAY 8, 1957

The Court: Be seated, please.

When we adjourned yesterday afternoon, we were in the process of interrogating the witness Joe Vaello. Has the Government finished its direct examination?

Mr. Bottler: We just have about two questions, Your Honor.

The Court: Very well, sir, you may continue.

2-295 JOE VAELLO,

being the witness who was on the stand at the time court recessed on May 7, 1957, resumed the stand at this time, and continued his testimony as follows:

2-295 DIRECT EXAMINATION (CONTINUED)

Q. (By Mr. Bottler) Turning your attention to check No. 29392 to Arcadio F. Gutierrez, for drapery and stage equipment for auditorium installation and material, for $705.95, I will ask you whether, prior to the date that the drapery was replaced in late 1954 and 1955, you had occasion yourself to see the old drapery that was replaced then?

A. Yes, sir, I have.

Q. On what occasion, and when did you see the old drapery?

A. Oh, on several occasions when the school has programs, and I have attended different films there, also, educational films that the school presents to the Rotary Club.

Q. And when was the earliest time that you recall seeing that old drapery?

A. Well, since after the war, 1946, 1947.

Q. All right, sir, and was the drapery that you saw in 1946 and 1947 the same drapery that was replaced in 1954 and 1955?

Mr. Foreman: I object to the form of that question as leading and suggestive.

The Court: Now—does it suggest an answer? I don't believe it does.

Mr. Foreman: I submit, on the form. I don't care to argue with the Court. The Court knows better than I.

The Court: It is the opinion of the Court it does not suggest an answer.

Mr. Foreman: It suggests to me, the tone of it, as well as—may it please the Court, he says was the drapery that you saw in 1946 and '47 the one that was replaced in such-and-such a year. That is the form, the identical question.

The Court: Objection overruled.

A. They appeared—I think the draperies looked to me like they are the same draperies.

Q. All right. Drawing your attention to check No. 29129 to Jose M. Altamirano for contract of office con-

crete vault new office account for $987.65, check issued on March 24, 1951, I will ask you whether there is any office concrete vault in the Benavides school?

A. The only vault I know of is in the tax collector's office.

Q. And when was that installed?

A. It has been there for many years before the war.

Mr. Bottler: No further questions.

2-297 CROSS EXAMINATION

Q. (By Mr. Foreman) Mr. Vaello, who were the four members of the Board of Trustees at the Benavides Independent School District that, and the ones you selected, nominated and named, were replaced? What were the names of those?

A. The four members that resigned in Benavides?

Q. Yes.

A. Octavio Saenz, Mr. Garcia, Jesus Garza, and Richard Barton.

Q. This is Santiago Garcia and this is Richard Barton—I mean this is Jesus Garza?

A. Yes.

Q. Richard Barton is not here?

A. No.

Q. Will you tell us whether or not Richard Barton, in February 1954, was an active partisan of the Freedom Party?

A. In 1954?

Q. Yes, sir, in February 1954 and since?

A. I believe he has been since, but I don't know whether he was in February.

Q. Well, he was at the time Cullar and the other eleven returned 104 indictments against these people, wasn't he?

A. I don't know, Mr. Foreman, whether he was or not.

Q. Will you tell us approximately when Richard Barton became active in the Freedom Party?

A. I have no idea. I don't know.

Q. Richard Barton is outside in the hall, a Government witness, and not named in this indictment at all, isn't that true?

A. That is so I understand.

Q. Will you tell us whether or not that same Richard Barton resigned the same day these men did?

A. Yes, he did.

Q. Will you tell us how long, if you know, he was on the Board of Trustees of the Benavides Independent School District prior to resigning on February 10, 1954?

A. For several years.

Q. Probably for at least from 1949 through 1953 and up to 1954 in February, wasn't he?

A. Probably, yes, sir.

Q. Well, do you know of any action, act or conduct committed either by Mr. Saenz, Mr. Garza or Mr. Garcia, sitting here as defendants, that was not joined in by Mr. Barton?

Mr. Bottler: Your Honor, this calls for a conclusion on the part of this witness.

Mr. Foreman: I only asked if he knew, Your Honor.

The Court: The question is if he knew of any act or acts. Objection overruled.

Q. Do you understand the question? Do you know of anything, as a member of the Benavides Independent

School District, any official minutes, voting or anything else, that you might, as custodian of whatever records there are or Government's Exhibit 27 introduced here, or any minutes whatever, do you know of any acts or conduct committed or alleged to have been committed by Mr. Octavio Saenz, Mr. Jesus Garza, or Mr. Santiago Garcia, that was not likewise the act and conduct of Richard Barton, the Freedom Party member?

Mr. Bottler: Your Honor, I believe that in the question is contained the acts of which these defendants are charged, and unless this man had a copy of the indictment, he would not be able or know all of the matters set out therein, and he would not be able to give an answer.

The Court: The question is directed to his own knowledge, and the witness might testify of any acts or act he knows of within his own knowledge. I don't know whether he knows of any or not, but I will permit the question.

A. To my knowledge, no.

Q. So far as you know, anything they did as members of the school board in their official capacity as such, Richard Barton likewise did?

A. Probably.

Q. Thank you, sir. Tell us whether or not the three men standing here as defendants, and named in this indicatment, and now on trial, are active workers in the old party?

A. Yes, they are.

Q. And have been?

A. Have been.

Q. Since prior to February 10, 1954. Thank you Mr. Vaello.

Mr. Vaello, I know the answers to these questions, but the jury probably does not, so I shall ask them. Are you, by any chance, related by either blood or marriage to F. Vaello Puig, and if so, what?

A. Yes, sir, I am. He is my father.

Q. Your own blood father, and the husband of your mother, therefore related by both blood and marriage?

A. That is right.

Q. Your name is Vaello and his name is Puig, isn't it?

A. It is Vaello Puig.

Q. Is your father still living, I hope?

A. Yes, he is.

Q. And what is his age?

A. He is 60—he was born in '85.

Q. Born when?

A. In 1885.

Q. He would be 57 plus 15?

A. That is right. 72.

Q. All right, and the condition of his health, please, sir?

A. Well, he has been ill lately. He doesn't get out of the house much.

Q. He is unable to travel or appear as a witness, is he not?

A. Yes.

Q. And he is almost blind, if not totally?

A. That is right.

Q. I believe your father is from Spain originally; is he not?

A. No, sir, my mother was, not my father. My father was born here.

Q. Now, Mr. Vaello was not—did he not go by the name of Vaello until he was a grown man, and then be-

cause of a conflict of identity with the Frank Vaellos growing up, change his name to Puig?

A. That is correct.

Q. And that is called and pronounced Puig?

A. Puig.

Q. Is that a usual or unusual custom among Latin-Americans, as you know it in Southwest Texas, if an individual as a boy be known by one name, and to grow up and to avoid a conflict of identify, adopt his mother's name instead of his father's, or vice versa?

A. It has been customary under certain conditions, yes, sir.

Q. Does that account for the distinction between the name you go by, Vaello, and the name your father has, Puig?

A. Yes, that is correct.

Q. Mr. Vaello, what name do they usually start out with? Do they usually use the father's name first, or the mother's name first among Latin-American citizens in Southwest Texas?

A. The father's name is used first.

Q. And that custom, then, of Mr. D. C. Chapa being David Carillo Chapa, and Oscar Carillo and O. P. Carillo his sons being named Carillo has no ominous significance, does it?

A. No, sir.

Q. Is it or not true that your father was active in the original organization of the Benavides Independent School District, when it was first organized in 1915? Of course, you could only know that as a matter of history.

A. Was he originally active in the organization?

Q. I will ask you first, wasn't he one of the first tax assessors and collectors of that district?

A. No, sir, he was not, not when the district was organized.

Q. No, I didn't say the first, but—

A. At one time, yes.

Q. Do you know whether or not he was one of the organizers of the district, when it was organized in 1915?

A. No, sir, I don't know.

Q. You were born, I believe you told us—you are 44, making you born in 1913?

A. That is correct.

Q. And therefore you were two years old, if the district was organized in 1915, when it was organized?

A. That is correct.

Q. How long have you known Jesus Garza? I will ask first about George Parr. How long have you known him?

A. Oh, as far as I can remember.

Q. And you remember back to about five or six years of age?

A. I won't say that, no, sir.

Q. As your best recollection, what is the—about how old were you when you commenced remembering, when you continued to remember George Parr?

A. I suppose I was quite young. I don't know just how old I was, Mr. Foreman.

Q. Would you say eight or ten years old?

A. Perhaps.

Q. And his age, at that time, so as to give us an approximation of his age today?

A. His age at that time?

Q. You have known him since then, and you know about how many grades ahead of you he was, if he was ahead of you?

A. I don't know definitely, but he is older than I am.

Q. When you were seven or eight, was he about 17 or 18?

A. Yes, about that.

Q. Then he would be approximately 54, notwithstanding the color of his hair?

A. I would guess that is about right.

Q. Now—then, that would make him born about 1902, and 17 years old, if the Benavides Independent School District was organized in 1915, when it was organized?

A. That is correct, if that is when.

Q. How long have you known Jesus Garza?

A. A long time.

Q. And will you approximately estimate how much older, if he is older than you, is he older or younger?

A. He is older than I am, I would estimate.

Q. About how much older?

A. I would say another ten or 12 years.

Q. Then he likewise would have been 17 or 19 years old in 1915, if he is ten or 12 years older than you?

A. Yes.

Q. Octavio Saenz. How long have you known him, sir?

A. For a long time also.

Q. Can you tell us approximately how much older than you he is, according to your best judgment and your lifetime recollection of him?

A. Well, I will make another guess. I would say he is older by eight years or ten years.

Q. That would make him approximately 52, and there-

fore approximately 10 or 12 years old, or 14 years old at the time in 1915 of the organization of the Benavides Independent School District?

A. Yes, sir.

Q. Now, Santiago Garcia. Have you known him some time?

A. Yes, I have.

Q. How long, sir?

A. Very long. He used to work for my folks for many years.

Q. As a matter of fact, he was assistant tax assessor and collector under your father, when Mr. Puig Vaello was tax assessor-collector for the Benavides Independent School District?

A. That is correct.

Q. Did he work for you all also in other places?

A. That is correct.

Q. Where else did Mr. Santiago Garcia work for you?

A. My father used to have a general merchandise store, and he used to work there when he was a youngster.

Q. Was he a clerk?

A. Yes.

Q. He had access to the cash and the cash register?

A. Yes.

Q. Do you know how long he worked there?

A. Many years. He practically grew up in the store, I would say.

Q. Mr. Puig, will you estimate by your lifetime recollection of him, knowing him from the time you were old enough to remember, having worked in your father's store and in the tax office under your father's direction, the approximate age of Santiago Garcia?

A. Well, I will say ten years, ten years older than I am.

Q. That would have made him approximately 12 years old at the time of the organization of the Benavides Independent School District, if such was organized in 1915?

A. That is correct.

Q. How long have you known Mr. B. F. Donald?

A. Mr. Donald? I have known him a few years before the war. I would say I have known him since 19—I would guess '35.

Q. Then that would be approximately 22 years?

A. Yes, sir.

Q. You have known him as a banker, as a business man?

A. Yes.

Q. Have you all not attended regional and state banking conventions at the same time?

A. I don't know whether we have or not, but I have known him as a banker for many years.

Q. Have you known him as a Rotarian?

A. No, I believe Mr. Donald is not a Rotarian. He is a Kiwanis.

Q. You are a Rotarian?

A. Yes.

Q. Down in that county, the Rotarian speaks to the Kiwanis and the Kiwanis speak to the Rotarians?

A. I don't know what service club he belongs to, but he used to belong to the Rotary Club of Alice. I don't recall.

Q. What other contacts have you had to know Mr. Donald, other than as a banker and a club member?

A. He sold insurance for many years. He has been in the insurance business.

Q. Have you likewise sold insurance?

A. No, sir, I never have.

Q. Did you ever buy any from him?

A. No, I don't recall ever buying any from him.

Q. Then would you give us your best judgment of the approximate age of B. F. Donald?

A. Between 40 and 50.

Q. If he says he is 50, that would have made him born in 1907, and made him around eight years old at the time of the organization of the Benavides Independent School District if it was organized in 1915?

A. Yes.

Q. Mr. Jesus Oliveira, that is the sort of rotund gentleman in the glasses, you know him?

A. Oh, yes, yes, I do.

Q. What is the nature of your acquaintance with Mr. Oliveira?

A. I didn't hear you.

Q. What is the nature of your acquaintance with Mr. Oliveira?

A. He has lived in Benavides all of his life, and so I have, and he has done business with us in the bank for many, many years.

Q. Has he not been in business himself?

A. Yes, he has.

Q. And what business?

A. He has, at the present time, a farm implement store and a hardware store.

Q. Does he not belong to the same church you do?

A. Yes, I think so.

Q. Which church?

A. You mean the church? The Catholic Church.

Q. Is there only one in Benavides?

A. One Catholic Church.

Q. But there are other churches?

A. Yes.

Q. Would you tell us the approximate age of Jesus Oliveira, in your best judgment, as you have known him all of this life?

A. I would say he is over 60, 68, or something like that.

Q. Then if he was 68, he would have been approximately 22 years old—I am not much better on that than you are on your father's age. Let's see. Sixty-eight. That would have made him born about 1889, if he is that old? Therefore 15 plus 11—26 years old in 1915, at the time of the organization of the Benavides Independent School District, if it were organized in 1915?

A. Yes, if the age is correct.

Q. With reference to D. C. Chapa, how long have you known him?

A. A long time, Mr. Foreman. He has been reared right there in Benavides.

Q. As a matter of fact, there is almost as many Chapas in Southwest Texas as there are chaparral bushes around there?

A. There's quite a few.

Q. Is that where the bush got its name, or is that where the family got its name?

A. I don't know whether that is true or not.

Q. Any any rate, you know whether or not the family has been there for eight or ten generations?

A. Eight or ten generations?

Q. Of course you haven't been there that long, but do you know, as a matter of history, whether the Chapa

family in Southwest Texas antedates the Texas Independence?

A. As a matter of record I don't, but they have been there a long time.

Q. And would you give us the approximate age of D. C. Chapa, as you have known him all of your life, and as you would estimate?

A. He is age over 60.

Q. Over 60. Would you say 62 or 65?

A. No, he would be closer to 70. Sixty-eight or 70.

Q. Let's make it 70. That would have made him born about 1887, and therefore 15 plus 13—or 28 years old in 1915 at the time of the organization of the Benavides Independent School District, wouldn't it?

A. That is right, yes.

Q. You have watched Oscar and O. P. grow up? They are younger than you?

A. Yes, I think both of them.

Q. Give us their approximate ages. First Oscar Carrillo, Sr.?

The Court: Let me make this suggestion, in the interest of saving time. Counsel probably knows these ages. I will allow you to ask leading questions.

Mr. Foreman: I really don't.

The Court: I am sure the gentlemen beside you knows the ages of both.

Q. Would you say Oscar is approximately 35 years old and O. P. is 32?

A. Well, I thought Oscar was older than that. I would judge about 34, and I would guess O. P. around 30. I don't know their ages, however.

Q. At any rate, neither of them were born in 1915, as you know it?

A. No, sir.

Q. Did you attend either of their christenings? Did you attend the christening of either of these boys?

A. Oh, no, I did not, not when they were christened.

Q. Mr. Vaello, do you know how your father, Valleo Puig, was compensated, that is, whether he received a salary or a portion of his valuation on the rolls of the Benavides Independent School District when he was tax collector?

A. Yes, he had a salary and a percentage.

Q. Do you know what the percentage of the assessed rolls would be?

A. No. I have seen it in some minutes, in some records, but I don't remember the figure.

Q. If these people were the ages, excusing Mr. Oliveira and Mr. Chapa, that the record now reveals, at least at the inception and beginning of the Benavides Independent School District, it was organized, formulated, and started on its way by someone other than these defendants, wasn't it?

A. Yes, that is correct, yes, sir.

Q. And it was organized as an independent school district just like the 1900 ar 1800 other independent and common school districts, to administer the affairs of the school, and help provide schools for the children of the Benavides area, as you know in your capacity as president of that school board?

A. Yes.

Q. You know of no evil design or surreptitious intent that motivated the formation of the Benavides Independent School District, do you?

A. No, I do not know of any.

Q. All right, sir, thank you.

Now, Mr. Vaello, I believe you are a banker and a lumberman, and also a builder; is that correct, sir?

A. The last part of it?

Q. Are you a builder also?

A. Yes, I have been a builder.

Q. Are you any longer? Do you still build, whenever there is any building to be done?

A. That is correct, yes.

Q. But actually there isn't any particular boom on in Benavides at this time?

A. Yes, that is right.

Q. And did you ever build roads or bridges, or only structures for folks to use as homes, or school houses?

A. Only building structures, homes, no roads or bridges.

Q. Did that, Mr. Vaello, have anything to do with your refusal to be county judge, and elect to be trustee?

A. With my refusal?

Q. You declined the proffer of appointment as county judge, did you not?

A. Yes.

Q. And you accepted as superintendent of the schools?

A. That is correct.

Q. I mean board trustee. Was that because of your occupation, or was it for some other motivating reason?

A. No, it wasn't because of my occupation, Mr. Foreman.

Q. You just didn't have time to give to the county judge's office? It was more than you could dedicate to public service?

A. No, I don't think so. Being county judge is more of a political position, and I have no interest in politics.

Q. You knew you could be free and clear of all politics as a member of the Benavides Independent School District Board of Trustees?

A. I thought so.

Q. I believe you selected, nominated, designated, and named the other four who were to be, and made your acceptance of election to the Board contingent upon your slate being endorsed and installed as the majority of the Benavides Independent School District, the Benavides members, did you not?

A. Well, yes, that is correct.

Q. And in selecting them, did you or did you not select, among others, one Mr. Calvin North?

A. That is right.

Q. And was or not Mr. Calvin North an employee of the Vaello interests, gins?

A. He is an employee of a corporation. We have some stock in that corporation.

Q. What is that name?

A. The Benavides Milling & Ginning Corporation.

Q. You have no control of the corporation?

A. No, sir, we have not.

Q. You do not hold a majority of the stock?

A. No.

Q. Are you a director of it?

A. No, I am not.

Q. And Mr. Calvin North was named as your nominee, and elected because you suggested him?

A. That is right.

Q. Now, Mr. Joe DeLeon was another named, selected, and nominated by you as a prerequisite to your accepting appointment on the Board?

A. Yes.

Q. Mr. Joe DeLeon is a close friend of the Vaello family?

A. Yes, his is.

Q. And has been all of his life?

A. That is right.

Q. As a matter of fact, there is, whether you call it a party or not, a large group of people who look to you for political leadership, sometimes called the Vaello party in Benavides, are there not?

A. No, sir, I don't know of any. I don't believe I have ever heard the words "Vaello party."

Q. Well, without calling it a party, is it not established as a practice there that you are spokesman for a sizeable segment of the citizenry of Benavides on political matters?

A. No. My answer would be no, Mr. Foreman.

Q. All right. Is there a group there called "Las Vaellos" or "Los Vaellos" meaning "The Vaellos," whether it is a party or a unit, or otherwise. Is that a common term when an election is coming up, Los Vaellos or Las Vaellos?

A. I don't know of any, Mr. Foreman. I don't know of any group or organization.

Q. Well, if there were such, Joe DeLeon would be one of the first leaders?

A. I don't know whether he would or not.

Q. Do you know any business man there, not named Vaello, any closer to you than Joe DeLeon?

A. He is one of the merchants there.

Q. And he is one of the closest to you?

A. Well, yes.

Q. Now, Mr. Vaello, who was the third of the four that you selected? This is Calvin North, Joe DeLeon. Who is the next one?

A. Another businessman, Frank Vaello, Jr.

Q. Purely a coincidence, and no relation of yours?

A. Yes.

Q. You say he was not?

A. Yes.

Q. Oh, he was. What relation is he?

A. An uncle of mine.

Q. Your mother or father's brother?

A. Mother's.

Q. Your mother's brother, and he and you are likewise close personal friends?

A. Oh, yes.

Q. Now, then, you did make, as a prerequisite to your accepting appointment as a member—by the way, does that Frank Vaello you mentioned, your uncle, a board member, also own a part of the gin?

A. Yes, he owns some stock.

Q. Then, with DeLeon, Calvin North, and Frank Vaello, Jr., and yourself, you comprise four of the seven members of the Benavides Independent School District Board of Trustees?

A. Yes.

Q. And by established practice, does that constitute a majority and therefore control of the affairs of the Benavides Independent School District? Is that not true?

A. It can be true, by controlling it, but I don't believe we exercise any control. We worked as a board, a seven-member board, Mr. Foreman.

Q. You do not mean by saying "we do not exercise control," you abandoned your responsibility or duties as a member of the board? You do not mean that?

A. Perhaps I misunderstood you, but when we went in, we went in with the idea of seven board members running the schools.

Q. I see, but even if the Freer members deferred, you would still have control with the four members you named, including yourself?

A. Yes, it could be that.

Q. By the way, is this Dr. Gonzales you mentioned related to you?

A. Yes, he is my brother-in-law.

Q. Your brother-in-law?

A. Yes.

Q. Was he a Vaello?

A. No, he is not a Vaello.

Q. Was his mother one? He is married to your sister?

A. He is married to my sister.

Q. Oh, I see. I see the only doctor at—I beg your pardon, is he one of the principal druggists, the only one with a registered pharmacist, Joe DeLeon?

A. No. We have two other people that are registered pharmacists.

Q. That don't work for Joe DeLeon?

A. No, not now. One of them used to work for him. There are two other people registered pharmacists.

Q. And Dr. Gonzales is the doctor, and sends his prescriptions to Joe DeLeon?

A. I don't think he specifies where the prescription should go.

Q. Where are his offices, with relation to Joe DeLeon's drugstore?

A. About three blocks.

Q. Mr. Vaello, you did make a prerequisite of your appointment the election of these other three people, didn't you?

A. Yes.

Q. And you did not want to serve unless you could serve with them, did you?

A. Yes, that is correct.

Q. Now, have you been accused, either by indictment or otherwise, of being a political dictator in the Benavides Independent School District?

A. Have I been accused?

Q. Yes.

A. Of being a political dictator?

Q. Yes.

A. Not that I know of.

Q. I am not insinuating you were. I just wanted to know if you had been.

How long did this new board you selected, and in whom you had implicit faith and confidence—you did have that, did you not?

A. Yes.

Q. How long did you all serve as a majority of the Benavides Independent School District Board of Trustees, until someone else sat on the board?

A. For approximately a year, or perhaps a little over a year. A year and two months.

Q. And during that time, of course you had an audit made of the BISD books back from 1949 through 1953, didn't you?

A. We had an audit made only one year back, back to 1953.

Mr. Foreman: May I have Government's Exhibits 6, 7 and 8, please, sir? The bonds?

Do you have a copy of that audit?

A. No, sir, I do not.

Q. And as a matter of fact, that was not an audit at all until commencing February the 10th when your new board came in. That is when your audit was set up, February 10, 1954?

A. Well, we had to go back to the school year which started in September.

Q. Who did that, by the way?

A. Slavick & Ponder, Corpus Christi.

Q. They are certified public accountants?

A. Yes.

Q. Frank J. Slavick and Ed Ponder?

A. Yes.

Q. They are both living still, and still active in their business?

A. Yes.

Q. And while you and those other four men were a majority of the BISD, you—did you file any suit against the Texas State Bank of Alice for maladministration of the funds of the BISD?

A. No, sir, we did not.

Q. You do know, as a banker, that a depository bank makes a bond, guaranteeing that the funds will only be paid out in accordance with law, and for lawful purposes, and makes itself liable for every dime that may be improperly expended, and not only is the bank liable but the insurance company executing the bond is likewise liable in full for any funds that may be improperly paid for any

purpose other than an official and proper function of the Board of Trustees, do you not?

A. Yes, with one exception. Usually those bonds are securities, and they are not insurance policies.

Q. All right. They are secured by stocks or by bonds of municipalities, or other subdivisions that are gilt edge securities for the performance of the contract of the company?

A. Yes.

Mr. Foreman: May it please the Court, I have three. I would like to read one of them only, the jury not having had an opportunity to read it.

The Court: Very well.

Mr. Foreman (Reading): "Depository Pledge Contract to cover School Funds of Independent Districts. The State of Texas. County of Jim Wells. Know all men by these Presents: That Texas State Bank of Alice of Alice, Texas, does hereby pledge and deposit the following securities with the school board of the Benavides Independent School District, in the amount of $31,000 upon the terms and conditions and for the purposes hereinafter set forth:—" and it says—let me get one that isn't so blurred. That is so dark I can't read it.

"Date of issue—" these are subdivisions in columns—description including serial number—description including serial number, rates, date of maturity. Amount. "Date of issue: 12-1-40, City of Aransas Pass Seawall & Breakwater bonds 207-220, rate 3 per cent, date of maturity 12-1-54-55, amount $14,000. Date of issue 5-1-26, description, Elgin Independent School District bonds, 53-54, 67, 60, 63, rate 5 per cent, date of maturity 5-1-54-57, amount

$5,000. Date of issue 11-1-45, description, City of Aransas Pass, Texas, Seawall & Breakwater bonds 338-343, rate 2-1/2 per cent, date of maturity 11-1-59, amount $6,000; date of issue 4-10,51, Alvin Independent School District Schoolhouse bonds, 406-410, rate 2-1/4 per cent, date of maturity 4-10-63, amount $5,000. Date of issue 12-1-44, U. S. Treasury Bonds. 79145-46, rate 2 per cent, date of maturity 12-15-54/52, amount $200,000. These securities held by: $30,000. Alamo National Bank, San Antonio, Texas, $200,000, Hanover Bank, New York, New York. Signed, sealed and dated this the 3rd day of December, A. D., 1951. The conditions of the above contract are such that whereas, the above bounden pledgor, Texas State Bank of Alice, of Alice, Texas, was, on the 3rd day of December A. D. 1951, duly and legally chosen by the school board of the Benavides Independent School District, of Duval County, Texas, depository of the school funds of said district for a period of two years beginning September 1, 1951, and terminating August 31, 1953.

Now, therefore, the above bounden pledgor, the Texas State Bank of Alice, of Alice, Texas, (no officer, director or stockholder of which is a member of the school board), agrees to the following, to-wit:

1. That it will pay interest daily balances on the school funds, provided such may be authorized under rules, regulations or by-laws, promulgated by the Federal Reserve Board; the e payments to begin on or after the effective date of the promulgation of such rules:

2. That it will comply with all the provisions of the laws of the State of Texas relating to school fund depositories, that it will perform all duties therein specified,